

THE MYTH OF THE SELF-RESTRAINING STATE: BECOMING *SEONJINGUK* AND THE  
NATIONAL HUMAN RIGHTS COMMISSION OF KOREA

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## ABSTRACT

Why do states comply with international human rights laws and standards? Specifically, why do so many states create national human rights institutions (NHRIs) within their domestic spheres, when NHRIs are, in theory, designed to be watchdogs for the states' wrongdoings? Although this state behavior seems paradoxical, the number of NHRIs has drastically increased in the last decades; as of 2017, there are 117 NHRIs in existence. The implementation of NHRI norms differs from state to state, and each state's motivation for creating an NHRI is equally individual; therefore, the reasons behind each state's creation of a self-limiting NHRI must be analyzed individually. Extant studies on NHRIs predominantly focus on identifying *what* contributed to the spread of NHRIs (e.g., pressure from inside or outside the country), attempting to identify the variables that caused the proliferation of NHRIs. This scholarship does not provide a full account of *why* states have come to realize it is in their interest to establish NHRIs and *how* it happened. In this dissertation, I examine the case of South Korea (herein called simply "Korea") and the establishment of the National Human Rights Commission of Korea (NHRCK). I demonstrate that Korea established this institution, which presumably limits state power, as a (somewhat successful) means of gaining international legitimacy. Korea created and consolidated the NHRCK in an attempt to materialize its desired identity, that of a *seonjingung* (advanced country). Korea therefore saw the establishment of the NHRCK as being in its national interest and as a ticket to join the *seonjingung* nations. By tracing the rise and fall of the NHRCK over time (2001–2012), I bring back the *forgotten* agent—the state; I contend that the state controlled decisions about whether to comply with or disregard the global human rights norms represented by NHRIs, and that the decision to comply was a policy preference, pursued in service of its goal of becoming *seonjingung*.

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# CHAPTER 1

## INTRODUCTION

### 1.1 Introduction

Why do states comply with international human rights laws and standards? In particular, why do states comply with national human rights institutions (NHRIs),<sup>1</sup> which are designed to be watchdogs for each state's human rights situation? As of January 2017, there are 117 NHRIs around the globe (Global Alliance of National Human Rights Institutions 2017a), and since the 1990s, there has been a fifteen-fold increase in the number of NHRIs, with more than five new NHRIs being created each year (Kjaerum 2003, 5). How can we understand the global phenomenon of the proliferation of NHRIs? Scholarship on NHRIs has primarily focused on providing an answer to “why and under what conditions human rights institutions are created by states” (Goodman and Pegram 2011b, 3), but these studies fail to provide a full account of why states *voluntarily* comply with global standards on NHRIs; these studies have generally presumed that states' compliance with the global norms on NHRIs is mostly “coerced” or “influenced” by external agents (e.g., pressure from inside or outside the country)—a position that marginalizes the state, framing it as a mere dependent agent.

In this dissertation, I contend that a state's adoption of NHRIs can only be sufficiently explained by taking seriously the state and its identity, especially in cases where state compliance was not “coerced” but voluntary. In order to answer why states comply with NHRIs, I undertake a case study of South Korea (Korea) and the National Human Rights Commission of Korea (NHRCK), focusing on Korea's national identity—to be exact, the country's desired

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<sup>1</sup> NHRIs are broadly defined as a body which is established and designed by a government aimed at promoting and protecting human rights. They can be created under the constitution or by law or decree.

national identity, which is central to the shaping and re-shaping of its national interest and policies. I claim that NHRIs in Korea were principally adopted because of Korea's desire and goal to be recognized as a *seonjingu* (advanced country)<sup>2</sup> by other *seonjingu* countries.<sup>3</sup> Korea's desired identity was the core value that prompted domestic agents, including political leaders and activists, to proactively adopt NHRIs' norms. In addition to these domestic agents, the international community, who strongly supported the push for an independent and credible NHRCK, also effectively appealed to Korea's desire to be recognized as a "model country," a "human rights state," and a "regional leader" as they encouraged Korea to comply with the global human rights norms on NHRIs.

This research uses a constructivist approach to compliance to demonstrate how this desired *seonjingu* identity led Korea to see the establishment of the NHRCK as being in its national interest; Korea emulated what other advanced countries were doing (i.e., creating and supporting NHRIs) through a socialization process. In other words, Korea actively strove to gain international legitimacy by complying with the "appropriate" behavior of the time in pursuit of its goal of becoming *seonjingu*. With the fall of the Soviet bloc in the early 1990s, Western liberal democracy rose to become the most "appropriate" form of governance, and with democracy, international human rights laws and norms that primarily originate in liberal theory and philosophy have also risen. The universalization of liberal democracy and human rights as global standards enhanced the status of NHRIs, which rose to global prominence in the 1990s

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<sup>2</sup> Literally, *seonjingu* translates as "forward-going country," or advanced country. In Korea, the term *seonjingu* is a notion that has been historically constructed over decades. It has justified Korea's effort to "catch up" with more advanced *seonjin* states in a wide range of areas, from economic growth to social development to foreign policy to human rights policy.

<sup>3</sup> In previously colonized countries, national identity is largely based on the perspective of its previous colonizer. For example, the policies of developmentalists in post-colonial countries (Brazil and Argentina) are fundamentally influenced by Western development models, and these countries' intersubjective identities produce their acceptance of the hegemony of Western development (Sikkink 1991).

(Pegram 2010, 6; Koo and Ramirez 2009; Goodman and Pegram 2011a). Since that time, the creation of NHRIs has gradually become a way for countries to show how “legitimate” they are; NHRIs are seen as an indicator of good democratic governance, regardless of the political reality of a given state. This study investigates how, under these global circumstances, Korea sought international legitimacy by adopting the widely accepted global norms around NHRIs in order to become a *seonjin* (advanced) democratic human rights state, and how the “appropriateness” of NHRIs reshaped, for a time, Korea’s definition of *seonjinguk* to incorporate NHRIs standards as a key component.

By tracing both the rise and fall of the NHRCK (from 2001 to 2012), this research examines the state’s control over accepting or disregarding global human rights norms via policy preference, setting aside the external influences from various global and domestic agents that so many previous researchers have focused on. This case study thus highlights the importance of answering why states voluntarily adopt NHRIs—an especially important question given that states have almost full autonomy in designing their NHRIs. As the case of Korea shows, external pressure was important, but only to a certain extent, and only when the state allowed it to be.

This study does not aim to provide answers that can be generalized to *all* states’ motivations for creating NHRIs because each state has different motivation. However, through the case of Korea, I intend to improve our understanding of why states comply with international human rights standards and norms by investigating state identity in the context of the dynamic building, shifting, and redefining of Korean state interest as it was demonstrated by the rise and fall of the NHRCK. This study, which takes seriously identity and domestic context, aims to fill in the gaps in the constructivist approach to studying global norms; constructivism tends to focus on a top-down perspective on norms diffusion (seeing norms as primarily flowing from the

international level to the domestic level) and to underestimate domestic causes (Vanhala 2015, 837).

In addition, the case of Korea provides empirical evidence of how compliance with international human rights norms can actually strengthen a country's power and legitimacy rather than limiting them. This dissertation illustrates how the NHRCK, an institution that presumably limited state power, ironically contributed to the enhancement of Korea's national image and international legitimacy. In the sections that follow, I explore different theories of compliance in international relations (IR) and delve into the mechanisms of compliance that are most suitable for analyzing the case of Korea and the NHRCK.

## 1.2 Theories of Compliance

This section provides an overview of the two major schools of IR, rationalism and constructivism; it analyzes each school's central arguments on compliance, assesses each school's contributions and pitfalls, and identifies which approach best explains Korea's compliant state behavior regarding NHRIs.

### 1.2.1 Rationalist Approach to Compliance

Until the end of the Cold War, the field of IR examined compliance mostly from a rationalistic view of world politics and international law (Ruggie 1998, Wendt 1992, Katzenstein, Keohane, and Krasner 1998), and these rationalists offered several different views on compliance.

Some rationalists denied the notion of compliance per se, arguing that, unlike national laws, international human rights laws or norms can never be enforced (Koh 1997). This group of rationalists could not explain, however, why international human rights laws and norms are implemented and why they are not violated, despite the lack of a strong enforcement mechanism;

their position was further weakened by the argument, made by many scholars, that enforcement mechanisms for international laws or norms should be understood differently than enforcement mechanisms for domestic laws. Even Hans Morgenthau, a strong critic of international law, does not deny that international law exists as a system of binding legal rules (Morgenthau 1954, 249–252). Indeed, some scholars argue that human rights norms gained acceptance in almost every state after the adoption of the Universal Declaration of Human Rights and the entry into force of two covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Mutua 2007, 575–577).<sup>4</sup>

Another group of rationalists claims that states comply with international laws or norms only insofar as compliance serves the state's national interest. This claim is based upon the rationalist understanding of what a state is: the only unitary agent in a brutal international system. Under this understanding of the state, states act to pursue and maximize their interests, which include a combination of security, power, wealth, and so on (Katzenstein, Keohane, and Krasner 1998, Keohane 1984, 1988). In this view, states exist to pursue their interests on a continuum that ranges from the survival of the state at one end to power maximization at the other (Waltz 1979). This group interprets states' compliance behavior—ratifying and implementing international human rights laws and norms—within the framework of self-interest.

The Cold War–era rationalists' cost-benefit analysis of compliance in terms of state interest is continued in the current era of global politics by a school known as the neo-realists. While the neo-realists acknowledge that the post–Cold War world environment has changed to one of increased collaboration and cooperation among states, they continue to interpret states'

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<sup>4</sup> This view is highly contested, because powerful states, especially the United States and the People's Republic of China, do not fully comply with human rights laws and norms. For instance, the US has not ratified ICESCR and China has not ratified ICCPR. Scholars point out that the noncompliance of these two big powers is particularly important in light of the United States' post-9/11 policy on torture and China's persistent resistance to human rights pressure (Risse, Ropp, and Sikkink 2013, 4).

increased compliance with global norms only within a framework of self-interest. For neo-realists, states comply with international human rights regimes because norms and institutions operate as a mechanism for the maximization of state interests (Krasner 1983, 1993).

It is often argued that the rationalists' interpretation of compliance follows the logic of consequentialism, rather than the logic of appropriateness (March and Olsen 1998, Olsen and G. March 2004); the logic of consequentialism is based on coercion and requires the use of force or legal enforcement, while the logic of appropriateness is based on persuasion and discourse (Risse, Ropp, and Sikkink 2013, 12–16). Thomas Risse's (2002) story illustrating the logic of consequentialism goes as follows: A driver who encounters a red light in the middle of the night with no one around may or may not stop and wait for the light to change, and her decision about whether or not to stop is based in the domain of rational choice. Under the logic of consequentialism, if the driver stops, it is because she engaged in a close calculation of the consequences of not stopping, which might include being fined by police hidden in the bushes. Using this same logic of consequentialism, rationalists claim that states ratify and implement international human rights treaties and norms because of the possible consequences that would follow noncompliance. This logic of consequentialism was long the most common explanation of states' behavior in the fields of international studies and international human rights.

### 1.2.2 Constructivist Approach to Compliance

Constructivists, who stress the relationship between ideas (identity) and social processes in diverse issue areas, offer another interpretation of the story of the late-night driver (Adler 1997, Checkel 1998, Katzenstein 1996, Wendt 1992), one that emphasizes the logic of appropriateness: The driver stops simply because that is what one ought to do when encountering a red light. This explanation does not involve a calculation of her interests or preferences; she stops because it is



what she is expected to do—it is what she learned in driving school. Based on this logic of appropriateness, constructivists argue that states do not only “obey” international human rights laws; they willingly “comply” with these laws and norms, because following human rights laws and norms is an “appropriate behavior.” This is what international society expects good states to do; good states comply with international human rights laws and norms. (Recall that, beginning in the 1990s, human rights increasingly began to be treated as “the right thing.”) The constructivists thus challenge the interest-based logic of rationalists, who suggest that the guiding principle is “Do X to get Y”; constructivists shift that logic to “Good states do X.” Therefore, states that want to be regarded as good states do X—what good countries do. Constructivists do not dismiss the logic of consequence that underpins the rationalist argument; they do argue that states’ compliance with international norms are almost always utilitarian in the beginning (Risse, Ropp, and Sikkink 1999). Constructivists, however, pay attention to how this utilitarian approach develops by also examining the roles played by ideas (identity) and socialization.

### 1.2.3 Constructivism and the Power of Norms

Constructivists have a flexible understanding of the structure of the ever-evolving international system (Adler 2002). They do not see social structure as a given, static independent variable but as a malleable one, contending that “shared knowledge and intersubjective understanding may also shape and motivate actors [ . . . ] and the social structures may supply states with both preferences and strategies for pursuing those preferences” (Finnemore 1996, 15). Constructivists thus reverse the traditional causal arrows; instead of seeing states—the main agents of the international system—as a passive entity, influenced by other actors such as non-governmental organizations or intergovernmental organizations, they see states as being

influenced by social norms produced by others. According to Katzenstein, norms “describe collective expectations for the proper behavior of actors with a given identity. In some situations, norms operate like rules that define the identity of an actor, thus having ‘constitutive effects’ that specify what actions will cause relevant others to recognize a particular identity” (Katzenstein 1996, 5). In other words, although norms may lack enforcement power, they are very effective in shaping and strengthening state identity, interests, and behavior through the the concept of appropriateness; states learn what is “appropriate” and voluntarily comply with the norms of appropriateness (Risse, Ropp, and Sikkink 1999, Finnemore and Sikkink 1998, Goodman and Jinks 2013).

Finnemore argues that the logic of appropriateness validates “thoughtful, intelligent political behavior” (Finnemore 1996, 29). Many examples illustrate how norms have changed state behavior by shaping states’ interests and preferences (Cortell and Davis 2000). For instance, Richard Price argues that many states have decided not to use chemical weapons—not just because the states are bound by treaties that forbid it, but because of the negative image of chemical weapons, which are constructed as poor man’s weapons. Chemical weapons are stigmatized and are associated with the identity “poor country,” and many states thus voluntarily agreed not to use them (Price 1997). This behavior was shaped by states’ desire that others not think of them as poor or weak. Similarly, Nina Tannenwald challenges the widely believed explanation that nuclear weapons are most useful as deterrents. She argues that a normative element must also be taken into account because the normative prohibition on the use of nuclear weapons has stigmatized them as “unacceptable weapons” of mass destruction (Tannenwald 1999). These studies show the importance of identity—both subjective and intersubjective—in shaping the behavior of states.

A subgroup of constructivists, the post-structuralists, provide valuable insight into national identities for this study. They view national identities as discursive social identities that are constructed, deconstructed, reproduced, and transformed according to context: national identities should be understood as “dynamic, fragile, vulnerable” and “often incoherent” rather than “consistent, stable and immutable” (De Cellia et al. 1999, 154). Thinking in terms of national identity, which changes with context, enables me to examine Korea’s different national identities at different points in history.

#### 1.2.3.1 International Organizations as Teachers of Norms

If norms are socially learned, who are the teachers of norms? Who are the agents that create the social structures that produce behavioral changes through the logic of appropriateness? Building upon Wendt’s argument, which claims that agents and structures are mutually constitutive, Finnemore argues that agents and social structures mutually constitute one another: agents shape social structures, and social structures, in turn, influence and reconstruct agents. Finnemore examines the activity of three international organizations (IOs) and describes how these IOs socialize “states to accept new political goals and new values that have lasting impacts on the conduct of war, the workings of the international political economy, and the structure of states themselves” (Finnemore 1996, 3). She also examines two intergovernmental organizations, the United Nations Educational Social and Cultural Organization (UNESCO) and the World Bank. She demonstrates how states learned through UNESCO that modern states establish science bureaucracies and became eager to establish the same science bureaucracies in their own government structures. Similarly, Finnemore’s case study of the World Bank shows that the notion of development changed from one based on measures such as GDP and GNP to one that began to incorporate distributional concern—a change that states accepted as being in their

interests. As is typical in the work of constructivists, Finnemore's study reverses the traditional causal arrows, showing that not only do states influence IOs but international systems such as IOs change and reconstitute state identities, interests, and behavior. Many constructivist authors emphasize the role played by IOs as an agent of social-structural change in international relations, because IOs change the identity, interests and behavior of states (Finnemore 1996, Ruggie 1998, Barnett and Finnemore 2004).

#### 1.2.3.2 Nongovernmental Organizations as Teachers of Norms

Other groups of constructivist scholars see nonstate “activists beyond borders” and their transnational advocacy networks (TANs) as a major force in social construction and in norms-teaching (Keck and Sikkink 1998; Risse-Kappen 1995). Keck and Sikkink (1998) argue that state sovereignty is now challenged and diversified—states no longer look unitary from the outside world, and “the state does not monopolize the public sphere” (32); these scholars bridge the “increasingly artificial divide between international and national realms” (4) by elaborating the norms-teaching role of nongovernmental organizations (NGOs) and their transnational advocacy networks (TANs), positing what they call the “boomerang effect.” This “boomerang effect” model explains how TANs effectively link the domestic and international spheres: in a repressive state, domestic groups bypass the state, instead directly seeking international allies who can impose pressure on the state from outside (hence the boomerang analogy—the pressure, like a boomerang, leaves the state and then returns to its origin point). Keck and Sikkink describe how states' identity, interest, and behavior has changed in response to pressure from TANs in specific thematic areas, such as the environmental movement and women's rights; they show how TANs simultaneously exert pressure on the state from “below” (pressure from the domestic groups) and from “above” (pressure from other states, which have themselves been pressured by TANs).

### 1.2.3.3 States' Agency Underestimated by Student Role

In constructivist literature, the social structures of world politics that are shaped by agents in turn influence and reconstruct agents. In other words, constructivists perceive the relationship between agents and structures as mutually constitutive. Constructivists attempt to explain how social structures such as norms and rules shape state identity and interests. However, in constructivist studies, states often seem to be dependent variables, entities that behave only in the way they are “taught” by others; states are demoted to recipients of norms without much autonomy or self-determination. While this refreshing approach emphasizes how structure shapes world politics, it erases the salience of the state. As Finnemore puts it, “states are what they do. States are socially constructed entities. [. . .] States are continually evolving. They take on new tasks and create new bureaucracies to carry out those tasks” (Finnemore 1996, 4–5). Constructivists, perhaps driven by the need to differentiate their approach from that of the rationalists and particularly the neo-realists, spoke less of the state than of the agents that influence the state. But this constructivist erasure of the state becomes problematic when one attempts to explain why some states actively learn and others do not. States learn differently depending on the nature of each state, its society, and its state–society relations; some states are more autonomous than others, and some states are more susceptible to pressure than others. In examining states' norms compliance, the salience, autonomy, and variety of states must be accounted for (Evans, Rueschemeyer, and Theda 1985, Schedler, Diamond, and Plattner 1999, Lake 2007), as well as states' domestic political agency (Subotic, 2007; Goodman and Jinks 2004). Recently, constructivist scholars have begun to put the state back into consideration, seeing “statehood” as an important determinant of states' compliance with human rights and arguing that some states are incapable of complying, regardless of their intentions (Börzel and

Risse 2013). This suggests that studies of norms compliance cannot take place in a vacuum, but must pay attention to the particular circumstances of each state.

#### 1.2.4 Constructivism, National Identity, and International Legitimacy

The constructivist argument that the logic of appropriateness shapes particular identities and interests can be applied to states' international legitimacy-seeking behaviors. The literature of the nineteenth and twentieth centuries addressing the standard of civilization formed the foundation of theories of modern international society, which developed into the current-day discourse on international legitimacy. Scholars who assert the importance of international legitimacy often argue that states adopt, ratify, and implement international human rights treaties for reasons of identity, influenced by the logic of appropriateness. The state's behavior represents and is shaped by its identity—both its current identity (*who I am*) and its desired identity (*who I want to be*): if you want to be like someone, you behave as the person you want to be like behaves.

For example, in a Pierre Bourdieu-influenced account of Japanese leisure policy, David Leheny argues that Japanese government officials try to shape the leisure activities of citizens to reflect the country's desired identity, encouraging them to spend their private time in ways suitable for citizens of an "industrialized advanced modern country" like other Western European countries (Leheny 2003). In this account, Japan's desired identity plays a key role in its leisure policy; because Japan wishes to be seen as an advanced country, different from its poor Asian neighbors, government officials instituted policies aimed at encouraging Japanese citizens to behave in their leisure time like the citizens of a rich European country. Leheny's work also suggests the importance of intersubjective identity: states imitate the behavior of their role models, regardless of the reality of their current national identity. Japanese leisure policy

was aimed at encouraging citizens to behave in ways that citizens of Western European countries do, because Japan wished to be recognized as one of those rich, advanced countries.

States' international legitimacy-seeking behavior can be seen even more clearly in the field of international human rights. The power and stability of political regimes comes from consent; even repressive regimes govern by a combination of coercion and consent, and consent is the basis from which states derive their legitimation. In addition to securing domestic consent and legitimacy, states also seek international legitimacy (Risse, Ropp, and Sikkink 1999). A state seeking international legitimacy is "seeking to be a part of a community; being a legitimate actor in a community not only requires internalizing an external standard but also depends on intersubjective identity formation with others in the community and differentiating the self from others" (Flowers 2009, 24). States comply with international human rights norms both because they want to think well of themselves and because they want other states to think well of them—to view them as a legitimate member of a community. To understand states' compliance with human rights norms, scholars must understand state identities—who they are, who they want to be—and the logic of appropriateness. National identities should be understood as malleable and dynamic concepts that are constructed, de-constructed, and reconstructed over time.

When the acceptance of international human rights norms became an indicator for a "good democratic country," it also, in turn, became one of the very important ways for states to pursue international legitimacy in service of changing or reinforcing national identities. According to Petrice Flowers, who examined refugee women's employment and land mine policies in Japan, Japan and other states ratify and implement international human rights treaties because they believe these treaties will enhance their international legitimacy (Flowers 2009). According to Carl Stychin, Australia reinvented its national image and increased its international

legitimacy by speaking the language of international human rights, especially that of gay and lesbian rights (Stychin 1998a, 145–193). Jelena Subotic investigates how the Balkan states manipulated their transitional justice institution—institutions that are established in disgraced post-war states to address past state wrongdoings, including human rights violations—in order to reestablish their international legitimacy, using it to attain membership in prestigious international clubs such as the European Union (Subotic 2009). As these examples demonstrate, states pervasively appropriate international human rights, a value of “good” nations, to reinvent their public images or to obtain international legitimacy.

#### 1.2.4.1 The Importance of Domestic Context

Although many states comply with international human rights regimes to gain international legitimacy and be seen as an appropriate member of the international community, the degree to which states seek domestic or international legitimacy differs from country to country. Some states are more eager to obtain domestic legitimacy, while others care more about international legitimacy. To understand how intently a state pursues international legitimacy, the state’s identity-building process must be examined. Pursuing legitimacy by adopting international human rights norms means changes to the state’s domestic and national identity, which are created by the new norms: “Participation in transnational legal process creates a normative and constitutive dynamic. By interpreting global norms, and internalizing them into domestic law, that process leads to reconstruction of national interests, and eventually national identities” (Koh 1997, 2659). As Beth Simmons argues, this adjustment may be even more complex after ratification, when the international norms arrive at home: “for most countries, an internationally negotiated treaty is an exogenous event in the flow of national policymaking and legislation. Very few countries have both the political power and the will to fashion on



international human rights agenda that matches exactly their own legislative agenda” (Simmons 2009, 127). Even countries that are, in principle, genuinely committed to the values encoded in treaties can be barred from acting on those values by domestic opposition. What happens when international human rights treaties or norms that represent compromises in external sovereignty come home as an “exogenous” agenda?

International norms are not automatically diffused in the domestic sphere. Much research has examined the impact of global norms on domestic politics, but much less research has attended to how these diffused global norms work or do not work in the domestic sphere. Most studies are limited to analyzing the diffusion process at the vertical level: in these scholarly models, norms flow down from the global level to the domestic sphere, and the subsequent process of norms domestication within the state is ignored. However, some scholars have given due consideration to the process of domestication. In particular, Sally Engle Merry contends that global norms are not diffused intact; they go through a unique process of “vernacularization,” or localization, which translates the global norms into the domestic political structure and local culture. Merry discusses the role played by “translators,” who “translate” the global language of human rights norms and laws focusing on women’s rights into local contexts (Merry 2006). Other scholars recognize that the lack of attention to norms diffusion in the domestic context is a problem for the field; according to Vanhala, IR theories are weakened by their lack of attention to domestic political and institutional structures, and the biggest theoretical pitfall of the logic of appropriateness is its disproportionate emphasis on international structural features: the “top-down perspective tends to narrow the focus onto international organizations as the driver of domestic change, ignoring other potential domestic causes” (Vanhala 2015, 837). It is important, then, to study norms diffusion in both international and domestic contexts; domestic, political,

and institutional structures affect how international norms are diffused and understood, and understanding domestic contexts can help to explain both why certain norms are accepted in a country and others are not, and why some states adopt certain norms while other states do not.

### 1.3 A Note on Methodology

The constructivist model positing causal relations between external pressure (from IOs, NGOs, etc.) and state compliance does not provide a full account of compliance, because it leaves out several crucial variables that affect compliance, including domestic political agency (Subotic 2007). These models are often criticized as problematic by IR scholars (Hobson 2000) because they disregard intervening variables and contingencies; these oversimplified causal relations cannot explain why some states voluntarily adopt NHRIs without any pressure from outside, and they often assume that international norms are “implemented” without considering how they are diffused at local levels.

A recent comparative study of a number of European NHRIs demonstrates the importance of domestic context in establishing and strengthening NHRIs (Mertus 2009). Although this study does not attempt to explain why states establish NHRIs, it successfully overcomes the rather hackneyed approach to NHRIs that primarily examines the roles played by IOs and NGOs; it takes domestic context into account and examines multiple case studies. This comparative approach, examining multiple cases to analyze why NHRIs are established and why they work well, is a fairly common one (Stokke 2007, Byrnes, Durbach, and Renshaw 2008, Koo and Ramirez 2009), because it is conducive to creating general theories about NHRIs and to understanding the variations among NHRIs (Cardenas 2002, Reif 2000). However, when exploring the question of why states would create watchdogs for themselves, these comparative

studies may lack the in-depth analysis that is possible in single case studies. There is thus a gap in the literature, and a need for in-depth single case studies addressing this question; according to Hong, “although the past two decades have seen the proliferation of national human rights institutions (NHRIs) throughout the world, an analysis of the status and functions of an NHRI in a particular country has not been actively conducted” (Hong 2010, 193).

The need to do an in-depth study on one NHRI is clear, given the various forms and functions the organizations take across the world and given the impact of domestic context upon NHRIs; similarly, understanding the motivations behind a state’s creation of an NHRI requires an in-depth ethnographic study of a single country’s national identity-construction process. The single case study presented in this dissertation aims to fill gaps in the study of NHRIs and shed light on why states create NHRIs. This ethnographic method enables me to unravel the complex domestic context that enables norm diffusion and to trace how norm diffusion changes over time in the same domestic space.

This study examined official documents from the Korean government and from the international human rights community to see whether and how the establishment of Korea’s NHRI was connected to the concept of *seonjinguk*. The government documents included statements made at international meetings, public statements from Korean presidents, and records of the National Assembly of Korea discussing the promotion of the NHRCK as a means to become a *seonjinguk*. These government records indicate that Korea’s adoption of global human rights norms, including the norms on NHRIs, was often linked to the idea of Korea’s becoming a *seonjinguk*. Statements and reports from domestic NGOs and the international human rights community, including international NGOs and the UN, show how external pressure from these organizations, which instigated Korea’s desire to seek international legitimacy and

become a *seonjin* human rights state, effected change in the domestic sphere over time. And the analysis of newspaper articles focused on Korea's becoming *seonjingu* and especially on Korea's becoming a human rights *seonjingu* uncovers changes in reporting on this concept, showing that the definitions of *seonjingu* changed over time, first incorporating human rights into the definition and then removing them.

In addition, I conducted interviews with key persons who are experts in NHRIs and who are knowledgeable about the creation, development, and diminishment of the NHRCK. The interviews were valuable in filling in the gaps of textual analysis and offered a more in-depth, ethnographical account of the story of the NHRCK. The interviewees include Mr. Brian Burdekin (former Special Advisor on National Institutions to the UN High Commissioner for Human Rights); Mr. Park Kyung-seo<sup>5</sup> (the former Ambassador in Human Rights at Large, appointed by President Kim Dae-jung); Mr. Cho Yong-whan (a lawyer, one of the key drafters of the NGO-initiated NHRCK bill and the key negotiator with the Ministry of Justice); Ms. Choi Young-ae (former Secretary-General of the NHRCK); Mr. Lee Seong-hoon (the executive director of Korean Human Rights Foundation and the former Human Rights Policy Director at the NHRCK); Mr. Kim Hyung-wan (the former manager of the Human Rights Policy Division, NHRCK); and Ms. Kim Giyoun (of the Asian Forum for Human Rights and Development [FORUM-ASIA]).

#### 1.4 Organization of the Dissertation

This dissertation consists of seven chapters. In this introductory chapter, I have explained the central research question, laid out the line of argument, offered a brief literature review on

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<sup>5</sup> Korean names are written with the family name first, followed by the first name.

theories of compliance, and included a note on the methodology employed for this work. Chapter 2 explains how NHRIs began to be standardized in the 1990s, rising into prominence with the standardization of the global human rights norms and eventually achieving the status of an “appropriate” institution. The chapter also provides a review of existing studies of NHRIs and identifies gaps found in existing research.

Chapter 3 demonstrates how Korea constructed its *seonjingung* identity through nation-building and explores Korea’s state–society relations. I show how Korea came to follow the logic of appropriateness through seeking approval of others; I describe how the desire to become *seonjingung* was internalized by the state and by the people as a shared national goal over time, and how this national identity paved the way for the acceptance of global human rights norms relating to NHRIs.

Chapter 4 discusses how the global norms regarding NHRIs were diffused and actively accepted in Korea. I show the domestic struggle to accept NHRI norms and describe the national debate (which lasted for more than three years and involved multiple domestic and international actors) over whether to create the NHRCK as an independent governmental institution or as a private foundation. In this debate, one side appealed to Korea’s desired *seonjingung* identity and to the increased international legitimacy that an NHRI would bring, and this rhetorical strategy helped win the debate: the NHRCK was established as an independent institution, in adherence to the global standard.

Chapter 5 assesses how the NHRCK rose to become a model institution, praised by the international community and its peer NHRIs, under President Roh Moo-hyun. I investigate how the nation’s concept of *seonjingung*, in which human rights were at first deeply embedded, led the government to promote the NHRCK even when the NHRCK directly challenged the government

over a highly sensitive political issue (the president's decision to deploy troops to Iraq in 2003). The government absorbed this challenge, recognizing that the independence of the NHRCK was the most important standard for NHRIs and that its national image was at stake. The government understood that allowing the NHRCK to challenge the government's actions would enhance Korea's reputation as a *seonjin* human rights state in the international community. Chapter 5 also provides evidence that Korea's strategy was working: several Koreans were appointed to high-level positions in international organizations, including Ban Ki-moon's appointment as the UN Secretary-General.

The final substantive chapter, chapter 6, examines the reduction in the NHRCK's power in Korea after the inauguration of Lee Myung-bak, a political conservative who was inhospitable to human rights. I illustrate how the NHRCK was excluded from government policy preferences and was targeted for deliberate weakening. For Lee Myung-bak, the NHRCK was a hindrance to the pursuit of *seonjinguk* status rather than an asset to it. Chapter 6 proves how important a nation's domestic political context is in norm diffusion and reconstruction, showing how the change in the Korean domestic political climate—its increasing disregard of global human rights norms—changed the reputation and the enforcing power of the NHRCK.

Chapter 7 offers conclusions, examines limitations and gaps in the study, and makes suggestions for further research.

## CHAPTER 2

### STANDARDIZATION PROCESS OF NHRIS

#### 2.1 Introduction

This chapter builds upon the previously surveyed literature of compliance to show how the NHRI came to be accepted by many states as an “appropriate” institution that indicated a good democratic country. In so doing, I will trace the history of the ideas that led to NHRIs and examine how the norms and principles around NHRIs developed over time, and I will connect these developments with contemporaneous changes in world politics: the accelerated democratization process in many countries, the end of the Cold War, the rise of civil society, and the increasing standardization of global human rights norms. This chapter includes elaboration on the types of NHRIs and how they function in different settings—information that is important to understanding the flexible and distinctive characteristics of NHRIs.

This chapter examines the literature on NHRIs, including the methodologies used. It will identify the gaps and problems of existing studies, which primarily focus on the functions and effectiveness of NHRIs in the promotion and protection of human rights and the role of NHRIs in relation to other human rights actors such as courts, civil society, and international organizations. Existing studies are largely focused on *what* prompts states to create NHRIs, and they usually discover their answers in forces outside the state, such as influence from international organizations and pressure from NGOs. I contend that this approach is not appropriate for answering the question of *why* states adopt NHRIs, because it ignores the role of the state, which is of fundamental importance. This chapter justifies the study methodology, showing why an ethnographic study of one country adds to our understanding of how state

behavior is shaped by identity and interest in its adoption of global human rights norms and associated institutions. This chapter thus builds the groundwork for the case study of Korea that follows, as Korea's NHRI adoption is bound up with its national identity and its desire to be a *seonjin* human rights state.

## 2.2 Evolution of NHRIs

### 2.2.1 Early Development of NHRIs and Human Rights

The initial discussion of NHRIs dates back to 1946, when the international group of experts under the UN Economic and Social Council (ECOSOC), who were “preparing the future work of the Commission on Human Rights,” “proposed that governments should set up ‘national committees’ or ‘information groups’ to provide the Commission with information on states’ observance of human rights” (Pohjolainen 2006,119). This proposal from the expert group was later endorsed by ECOSOC and became a “common standard of achievement for all peoples and all nations” (Global Alliance of National Human Rights Institutions 2017b). The earliest NHRIs were aimed at enlisting governments’ participation in international human rights meetings, and particularly in the work of the Human Rights Commission; they were not originally intended to have the broad functions of promoting and protecting human rights that they now perform. In 1962, this initial concept was revised by the resolution of the Commission on Human Rights, changing the “national committees” or “information groups” into “national advisory committees for human rights,” designed to examine human rights at the national level, to offer advice to governments, and to create public awareness about human rights. Pohjolainen views this revision as a milestone that “set out the first blueprint for the basic functions of national institutions, namely monitoring, advice and education” (Pohjolainen 2006, 119). During this period, the



mandate of the organizations that would become NHRIs began to broaden, but key details of their status, structure, and powers were not yet laid out. The ECOSOC also at this time began to recognize the role of these soon-to-be NHRIs in promoting and protecting human rights at the domestic level, a shift that gained momentum once international human rights treaties were adopted and opened for signature and ratification in the late 1960s (Kim 2009a, 4–6).

Between the late 1970s and the late 1980s, simultaneous changes occurred that affected both the national advisory committees for human rights (the putative NHRIs) and global-level human rights activities: treaty-monitoring bodies were strengthened, fact-finding missions were undertaken, and working groups were created, all aimed at effectively responding to states' human rights violations (Ramcharan 1989, 514–515). The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) both entered into force in 1976, and this energized the discussion of the role of NHRIs might play in the domestic implementation of human rights treaties. In addition, the 1978 Seminar on National and Local Institutions for the Promotion and Protection of Human Rights in Geneva laid out the first broad guidelines for the structure and functioning of NHRIs (United Nations Division on Human Rights 1978).

The two covenants initiated a global movement toward the standardization of human rights. Shortly after the two covenants entered into force, major international human rights treaties were adopted; these treaties set a standard for what it meant to comply with international human rights laws and standards in various thematic areas ranging from racial discrimination to torture to women's and children's rights.

In this climate of increasing internationalization of human rights, the Commission on Human Rights proposed guidelines in 1978 that laid out recommendations for states about the

structure and functioning of NHRIs. These guidelines, which grew out of the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, offered a detailed set of recommendations for NHRIs' functions, their autonomous, impartial status, and their pluralistic composition. These guidelines were subsequently endorsed by both the Commission on Human Rights and the General Assembly.

### 2.2.2 The Paris Principles and NHRIs

The NHRI as we know it today was developed with the Paris Principles in 1991, at the International Workshop on National Institutions for the Promotion and Protection of Human Rights. This workshop, which took place in Paris, adopted comprehensive and detailed international guidelines governing the status, mandate, composition, and power of NHRIs. These guidelines, called the Paris Principles, were endorsed by the UN Commission on Human Rights in 1992 and the World Conference on Human Rights in 1993; they were adopted by the UN General Assembly in Resolution 48/134 in December 1993. Since then, the Paris Principles have become “the most authoritative normative basis that exists at the international level for defining the characteristic of national institutions for the promotion and protection of human rights” (Pohjola 2006, 9); they are now considered a standard-setting tool for testing the legitimacy and credibility of NHRIs. The Principles are further legitimized by the fact that they were originally drafted by representatives of NHRIs rather than by government representatives or diplomats (Goodman and Pegram 2011b, 6).

The Paris Principles require an NHRI to

- have as broad a mandate as possible, based on international human rights standards and norms;
- have its mandate set out in a constitutional or legislative text;

- have pluralist representation and be able to collaborate with all parts of society, including nongovernmental organizations; and
- have adequate resources to ensure its independent and stable functioning.

The Paris Principles are used by the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights (ICC) as the single most significant determinant in deciding the accreditation status of each NHRI.<sup>6</sup> In 2015, de Beco and Murray published a detailed commentary on the Paris Principles aimed at providing guidance for the application of the Principles (de Beco and Murray 2015). The role of the ICC has been an interesting subject for scholars studying NHRIs; for instance, Meg Brodie discusses the role played by the ICC in promoting norms socialization through its membership granting function (Brodie 2011).

Compliance with the Paris Principles is also used regionally, to determine whether a given NHRI should be admitted to different regional NHRI mechanisms, gaining access to privileges (Brodie 2006). In other words, for an NHRI to be taken as a legitimate institution, globally and regionally, it must meet the criteria set out in the Paris Principles. The Subcommittee on Accreditation, a subsidiary body of the ICC, evaluates the status of NHRIs in accordance with the Paris Principles. The ICC uses the following classifications:<sup>7</sup>

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<sup>6</sup> The ICC, a network of the world's NHRIs, has several functions: it facilitates and supports NHRI engagement with the UN Human Rights Council and Treaty Bodies; it encourages cooperation and information sharing among NHRIs; it promotes to other international agencies the role of NHRIs in the United Nations and in states; it helps NHRIs build capacity, in cooperation with the Office of the High Commissioner for Human Rights; and it evaluates which NHRIs are under threat and which governments should establish NHRIs (Global Alliance of National Human Rights Institutions 2017b). The ICC changed its name to the Global Alliance of National Human Rights Institutions (GANHRI) at the annual meeting of the NHRIs in March 2016. In this dissertation, the title ICC will be used for activities before February 2016, and the new name, GANHRI, will be used when referring to activities that took place after March 2016.

<sup>7</sup> If an NHRI has an A status, it is a full voting member and is allowed to participate in international human rights as a legitimate actor. As voting members, NHRIs with an A status can participate fully in the international and regional work and meetings of National Institutions and are eligible to hold office in the Bureau of the ICC or its subsidiary

A: compliant with the Paris Principles

B: not fully compliant with the Paris Principles

C: noncompliant with the Paris Principles

As of January 2017, there are 74 NHRIs with an A status, 33 NHRIs with a B status, and 10 NHRIs with a C status across the world.

Byrnes, Durbach, and Renshaw argue that while the Paris Principles set out minimum criteria for an effective and functioning NHRI, they should not function as standards for NHRIs. The authors question both the incompleteness of the principles and their pragmatic approach to measuring NHRIs' effectiveness and independence, noting that the Paris Principles reflect political realities: they are a compromise aimed at keeping governments from appearing to promote human rights by creating institutions without full independence and responding powers. In short, "the Principles are thus an attempt to forestall the creation of hollow institutions and to provide protection against the undermining of functioning NHRIs, as well as to promote the protection of human rights across the board" (Byrnes, Durbach, and Renshaw 2008, 65–66). Other scholars make similar observations about the Paris Principles; according to Goodman and Pegram, the "diluted" standards contained in the Principles were intended to cover many different forms of NHRIs, including weaker ones (Goodman and Pegram 2011b, 6).

Brian Burdekin, who played a fundamental role in the drafting of the Paris Principles and served as a Special Advisor on National Institutions, Regional Arrangements, and Preventive

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bodies. They can participate in the Human Rights Council sessions and be officially given the floor to intervene during sessions. NHRIs with a B status may participate in the regional and international meetings of NHRIs, but cannot vote or hold offices with the ICC. They are not given NHRI badges nor allowed to take the floor during Council sessions. Institutions with a C status have no rights or privileges with the ICC or in the UN human rights forums, including the Human Rights Council. See <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>.

Strategies to the first three United Nations High Commissioners for Human Rights, explained the dilemmas that were posed when the drafters were negotiating the language in the Paris Principles:

In an attempt to give a broad mandate to NHRIs, we had to make a choice about whether to insist on language for a strong commission or to adopt language aimed at promoting the wide involvement of as many states as possible. We made a strategic decision and went with the latter, but without compromising the core functions of the NHRIs and its independence and effectiveness. My conviction was that we had to have a language for which we could obtain the approval of the UN General Assembly.<sup>8</sup>

Kim Giyoun, a UN Advocate from an NGO called the Asian Forum for Human Rights and Development (FORUM-ASIA) that has done an extensive program on NHRIs, suggested a different view on the Paris Principles, especially regarding its accreditation mechanism:

The Paris Principles is somewhat limited in its ability to discern which are the credentialed and functioning NHRIs. We have NHRIs that have an A status because they meet the criteria of the Paris Principles, while the reality does not always come close to being a credible and effective NHRI. The criteria contained in the Paris Principles are not sufficient in evaluating NHRIs.<sup>9</sup>

Other scholars share Kim Giyoun's view. In a study examining the Paris Principles, Rachel Murray concludes that the Principles provide a useful starting point but lack appropriate criteria for measuring the performance and impact of NHRIs, and that other measurement tools are needed to properly evaluate individual NHRIs (Murray 2007). According to Petersen, the

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<sup>8</sup> Brian Burdekin (Former Special Advisor on National Institutions to the UN High Commissioner for Human Rights), in discussion with the author, Geneva, Switzerland, April 6, 2011; copy on file with author.

<sup>9</sup> Kim Giyoun (UN Advocate from FORUM-ASIA) in discussion with the author, Geneva, Switzerland, May 2, 2011; copy on file with author.

ICC review that is based on the Paris Principles could “create the wrong incentives for the governments” because of the Principles’ weak, vague, and narrow criteria (Petersen 2011, 176, 199–209).

Despite these weaknesses in the Paris Principles, they have not been revised since their adoption. Sidoti argues that this is because of the Principles’ strong legitimizing effects on NHRIs—in effect produced, in part, because NHRIs themselves played an important role in the drafting of the Paris Principles (Sidoti 2011).

### 2.2.3 Distinctiveness of NHRIs

NHRIs are distinctive institutions in several ways; for example, Anne Smith examines the institutions’ distinctive positioning and accountability mechanisms, which exist in a “conceptual space” between the government and civil society. She calls this a “mixed blessing,” pointing out that NHRIs are accountable in two directions: “downwards” to their constituencies, including partners, beneficiaries, staff, and supporters, and “upwards” to the government (Smith 2006, 905–906). The NHRI’s distinctive positioning is important, according to the UN: It notes that while the states are the primary duty-bearer of protecting and promoting human rights, they are often limited because they “cannot always find a neutral space in which to interact and exchange ideas with other actors, especially civil society” (United Nations 2010, 20). This need is filled by NHRIs, which “occupy a unique terrain, one that can link civil society to the Government”; NHRIs are effective in “providing a neutral meeting point and focal point for human rights,” which “encourages dialogue and facilitates cooperation” (United Nations 2010, 20).

Other scholars focus on the distinctive role played by some NHRIs in monitoring and implementing international human rights laws and norms. For example, Carver observes the increasing tendency among NHRIs to invoke international human rights standards in their

domestic monitoring and case handling (Carver 2010). Other scholars have argued that these NHRIs can be regarded as proxies for international human rights law operating in domestic spaces (Hong 2010, 174). Despite the often-notable roles played by NHRIs in implementing international human rights laws and norms, NHRIs' autonomy is limited by their mandates; these mandates are designed by the host states, who initially determine to what extent each NHRI may apply international human rights standards within that state.<sup>10</sup>

NHRIs are distinct from other state agencies, especially the judiciary, which is the traditional remedy mechanism for human rights violations. In general, judicial decisions are limited by existing laws and jurisprudence; therefore, courts' decisions may not always promote or protect human rights (United Nations 2010, 43). NHRIs, in contrast, often base their views on widely accepted universal human rights, whether or not those rights are protected in domestic statutes and whether or not there is existing domestic legal precedent for protecting those rights. However, NHRIs (unlike the judiciary) are not given the power to enforce compliance using coercion. NHRIs may make progressive, proactive decisions from a perspective of human rights advocacy, but these decisions can only be enforced by the "soft power" of the NHRI, and the acceptance of NHRI recommendations varies from country to country (Hong 2010, 168–169). In this regard, NHRIs are somewhat at the mercy of their host states: they are, in some regards, what states make of them.

#### 2.2.4 Diversities of NHRIs

An NHRI is defined by the United Nations as "a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically

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<sup>10</sup> For instance, Canada, Zambia, and the Philippines do not have the mandate to apply international human rights treaties.

designed in terms of the promotion and protection of human rights” (United Nations 2010).

Although the Paris Principles promote NHRIs and provide a general set of criteria for the institutions, NHRIs are fundamentally a governmental body designed by a government. The role of the state in the design of NHRIs is therefore crucial; states enjoy almost full autonomy in designing their NHRIs, deciding on its legal status, its level of independence, and the scope of its mandates. Consequently, NHRIs vary a great deal from state to state—some NHRIs are given power to investigate and litigate complaints while others are limited to promotional and advisory roles (Petersen 2011, 198). For example, while several NHRIs have mandates to apply international human rights treaties, the NHRIs in Canada, Zambia, and the Philippines do not (Goodman and Pegram 2011a, 11).

Most NHRIs focus on domestic human rights issues, but some NHRIs’ mandates enable them to promote and protect human rights outside their domestic sphere. For example, the Danish Institute for Human Rights has a mandate to protect and promote human rights both at home and abroad—a mandate that reflects the Danish government’s foreign policy in human rights (Mertus 2009, 14–37). And some NHRIs are established by support from other NHRIs acting internationally. Canada’s trans-governmental activism presents an interesting case of this kind of international NHRI work. In an attempt to support NHRIs outside Canada, the Canadian commission has been very active in several campaigns: it organized the first African Conference on National Institutions for the Promotion and Protection of Human Rights, held in 1996 in support of NHRIs in Africa; it supported and funded India’s NHRC, together with the Canadian International Development Agency; and it provided technical assistance to numerous countries establishing NHRCs, including Cameroon, South Africa, Bolivia, Peru, Mexico, Indonesia,



Thailand, and Cambodia (Cardenas 2003b). NHRIs are thus highly diverse; they have different mandates, and they may work in different settings—domestic, international, or bilateral.

NHRIs can also take different forms, including (1) the National Human Rights Commission model, in which the institution has multiple members and a broad mandate to monitor and promote national and international human rights within the domestic realm; (2) the ombudsman model, which consists of a single member and staff mandated to receive complaints alleging certain violations of domestic norms; (3) specialized commissions designed to tackle a particular human rights issue, such as racial discrimination; and (4) hybrid institutions, which combine various aspects of the other three models. Within these structures, NHRIs can, among other things, offer advice to governments on proposed and existing legislation, monitor international treaty implementation at the domestic level, provide training and research opportunities to both governmental and nongovernmental actors, and, in some cases, assist with individual complaints. Although some NHRIs have jurisdiction over both government and private conduct, most NHRIs do not (Mertus 2009, 3).

NHRIs' functions vary according to their host state's level of democracy. Linda Reif asserts that NHRIs in established or consolidated democracies perform their functions "as part of a wider network of domestic machinery, including courts and specialized tribunals," while NHRIs in democratizing states provide "a viable forum for the investigation and resolution of human rights complaints in countries where the judicial system is weak, politicized, slow or otherwise incapacitated." In states in transition, says Reif, NHRIs may contribute to the democratization process (Reif 2000, 3). Similarly, Kwak No-hyun explains that in transitional democratic societies, NHRIs' primary functions tend to focus on investigation and provision of remedy, replacing or complementing the weak state governance and legal systems. In more

developed states, NHRIs prioritize the provision of advice and the promotion of human rights (Kwak 1999, 88).

Models of NHRIs vary by region as well: the Iberian human rights and ombudsman models are predominant in Latin America; the multimember human rights commission model prevails in Africa, Asia–Pacific, and the Arabic world; and the ombudsman model is frequently found in Europe (Pegram 2010, 748–749). NHRI regional associations and networks seem to have influenced inter-NHRI emulation at the regional level. For instance, the Asia–Pacific Forum, a regional network of NHRIs, has played an important role in the creation and development of the region’s NHRIs (Renshaw and Fitzpatrick 2011), and some regional NHRIs, such as the Polish NHRI, have served as models that other regional NHRIs emulate (Carver 2011).

### 2.3 Development of NHRIs as an “Appropriate” Institution

As of January 24, 2017, there are 117 NHRIs in existence, meaning that more than 60% of United Nations member states host an NHRI (Global Alliance of National Human Rights Institutions 2017a). While the number of NHRIs has steadily increased over time, several studies indicate that there was a sudden worldwide increase in NHRIs in the 1990s. In their study on national strategies for advancing human rights, Pinheiro and Baluarte demonstrate that the number of NHRIs quadrupled in the 1990s (Pinheiro and Baluarte 2000). Before the 1990s, there were only about twenty NHRIs worldwide; in the year 2000, there were one hundred—a 280% increase in ten years (Kim 2009a, 113). During the same decade, international human rights norms became extensively accepted in both Western and non-Western countries (Alves 2000), including the Arab world, which saw the creation in the 1990s of NHRIs in Morocco, Palestine, and Jordan (Pegram 2010, 749).

The norms promoted by NHRIs have been accepted as “appropriate” behavior in recent decades. The normative status of NHRIs is evident in the recommendations of a wide range of human rights–monitoring bodies, including bodies that monitor civil and political rights, racial discrimination, children’s rights, and women’s rights; since the 1990s, these bodies have nearly always recommended establishing or strengthening NHRIs. For instance, available data shows that between 1999 and 2007, ninety-nine treaty bodies (whose mandate remains within the scope of the treaty that they monitor: CPR, ESCR, Women, Children, etc.) recommended that party states establish an independent NHRI in accordance with the Paris Principles; nineteen recommendations called for strengthening existing NHRIs (see Table 1). This shows that treaty bodies perceived NHRIs as a mechanism to enhance human rights in their own respective fields (Müller and Seidensticker 2007).

In addition, two international human rights treaties—the Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities (CRPD)—include a formal monitoring mechanism based on the Paris Principles (Lagoutte, Kristiansen, and Thonbo 2016, 6–7). Two of the twenty-first century’s first human rights treaties—the Optional Protocol to the Torture Convention and the CRPD—create an unprecedentedly large role for NHRIs in monitoring and implementing multilateral treaty obligations;<sup>11</sup> De Beco has pointed out the extensive role NHRIs play in the implementation and monitoring of the CRPD (de Beco 2013, 2011). NHRIs have also arisen as important actors in negotiating international human rights norms; they were deeply involved in negotiations on the UN Declaration on the Rights of Indigenous People (Sidoti 2011). NHRIs have a formal seat at the UN Human Rights Council and are one of the three entities (the others are governments and

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<sup>11</sup> For a recent discussion of these developments and their prospects for closing the compliance gap, see Carver (2010).

civil societies) that can submit independent reports to the Council, a right that makes NHRIs distinctive actors in the international community. NHRIs and the normative framework they offer, based on the Paris Principles, now seem to be recognized as an “appropriate” global standard.<sup>12</sup> In 2016 alone, the UN’s Universal Periodic Review (UPR) process refers to NHRIs 124 times, usually to express concerns or recommend that a government strengthen or create an NHRI.<sup>13</sup> Between 1999 and 2007, when treaty bodies referred to NHRIs in their concluding observation, 99 of these references recommended establishing an NHRI and 19 of them recommended strengthening an existing NHRI.<sup>14</sup>

#### 2.4 The Proliferation of NHRIs in the 1990s

A series of events in global human rights movements facilitated the 1990s proliferation of NHRIs. First, “the rise in NHRIs [. . .] overlapped with a global wave of democratization” (Cardenas 2003a: 28); the 1990s saw the beginning of this movement toward democratization, which demanded that states be held accountable for their actions (Schedler, Diamond, and Plattner 1999). Second, as democratization promoted citizen participation and state cooperation with civil society groups (Smith, Pagnucco, and Lopez 1998, Alagappa 2004), civil society groups such as NGOs flourished (Lee and Arrington 2008, Keck and Sikkink 1998, Boli and Thomas 1999, Reiman 2006), both domestically and internationally. The number of civil society organizations rapidly increased in the 1990s (see Figure 1).

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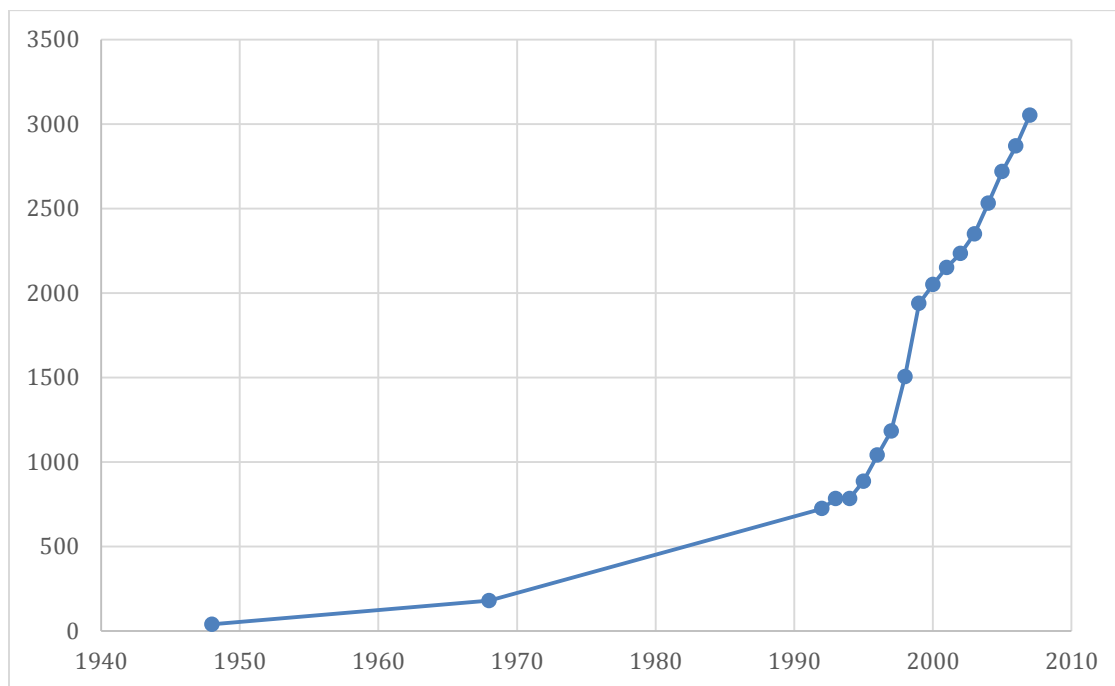
<sup>12</sup> The Committee on Economic, Social and Cultural Rights formally recognized the important role played by NHRIs in the implementation of rights contained in the ICESCR through its General Comment No. 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights.

<sup>13</sup> The database in which this data appears, the Universal Human Rights Index, does not allow searches for UN documents related to NHRIs in other years.

<sup>14</sup> Universal Human Rights Index, Office of the High Commissioner for Human Rights, data compiled by author.

The early 1990s saw the end of the Cold War and a wave of democratization after the fall of the Soviet bloc; the end of the Cold War “provided new opportunities for strengthening human rights as a number of Communist countries and other totalitarian states began a democratization process,” with more than sixty countries democratized between 1990 and 1996. In turn, this global wave of democratization facilitated the establishment of democratic institutions (Kjaerum 2003, 5). Cardenas argues that without the end of the Cold War, NHRIs would have been “unlikely to have proliferated as extensively” as they did during the 1990s (Cardenas 2009, 30).

Figure 1 Number of NGOs in consultative status with ECOSOC, 1945–2007.



*Source:* United Nations (2007). Consultative Status with ECOSOC. Available from <http://www.un.org/esa/coordination/ngo/about.htm>.

The end of the Cold War also brought the international status of the two extant covenants of rights into closer alignment. Since the 1966 adoption of both covenants—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—the ICCPR had been “regarded as the most important human rights documents, [ . . . ] characterized by their emphasis on individual rights, perhaps the most essential element of the rule of law in a Western liberal democratic state”; the ICESCR had been “much maligned and regarded by many as the ‘other’ covenant” (Mutua 2007, 576). Yet after the end of the Cold War, economic and social rights began to “lose some of their Communist stigma” (Mutua 2007, 953). The end of the Cold War also enabled both Western countries and former Soviet states to participate in the World Conference on Human Rights, convened in Vienna in 1993, which proclaimed that all rights are indivisible and interdependent. The end of the Cold War thus not only brought together the two isolated sets of rights—civil and political rights with economic, social, and cultural rights—but also enabled the World Conference, which produced many of the most important decisions for the global human rights regime and for NHRIs (Boyle 1995).

The international human rights regime has continued to strengthen since that time. For example, in 1994, the UN General Assembly created a UN human rights agency, the Office of the UN High Commissioner for Human Rights (OHCHR), which has a broad mandate to promote and protect human rights;<sup>15</sup> in April 2006, the UN General Assembly passed resolution A/RES/60/251, a landmark decision to replace the Commission on Human Rights with the Human Rights Council (HRC). The creation of the HRC promoted the commission to a council,

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<sup>15</sup> The history of the OHCHR shows the growth of the UN human rights programs. It started in the 1940s as a small division at the UN. It was upgraded to the Center for Human Rights in the 1980s, but it had limited functions and budget. The OHCHR, established in 1994, reports directly to the UN Human Rights Council and the UN General Assembly, and is a more independent organization, monitoring global human rights situations and mainstream human rights.

implying an institutional promotion of human rights within the UN human rights system. The Commission on Human Rights reported to the Economic and Social Council, a subsidiary body of the General Assembly; the HRC now reports directly to the General Assembly. The HRC was given an expanded mandate and broader responsibilities, including making recommendations to the General Assembly and undertaking a new mechanism called the Universal Periodic Review (UPR). UPR is different from other human rights—monitoring mechanisms. A state must be party to certain international human rights treaties to subject itself to international monitoring, and the monitoring can only be done within the purview of each treaty. But the UPR process obliges all member states—regardless of their ratification status—to subject themselves to regular peer monitoring, carried out by peer states (other monitoring mechanisms are carried out by human rights experts or the UN itself). UPR is based on a peer review process, and it is therefore often regarded as more political than other monitoring bodies.

Since 2006, international human rights regimes have been legitimized by an increasing number of countries, and being a “human rights state” has become an ideal for modern developed states (Ignatieff 2001, Mutua 2002, Stychin 1998b). The “holy trinity” of human rights development—democratization, the rise of civil society, and the strengthened human rights regime—created a conducive environment for NHRIs in the 1990s (Mutua 2002), and in this context, NHRIs became widely accepted norms, being successfully diffused into a wide range of governance systems (Pegram 2010). Globalization speeded up in the 1990s, very likely making the “norms cascade” (Finnemore and Sikkink 1998) easier and facilitating the regional and international spread of NHRIs. Gradually, it seemed that an NHRI became a membership card that served as an indicator for a “good country” and enabled one to join the group of liberal democratic countries (Reif 2000, Kumar 2003).

## 2.5 Studying NHRIs

Studies of NHRIs predominantly focus on reporting on the situation of NHRIs or on examining the organizations' effectiveness<sup>16</sup> (Burdekin 2007; Müller and Seidensticker 2007; Murray 2007; Gomez and Ramcharan 2016; Lagoutte, Kristiansen, and Thonbo 2016). However, several studies have elaborated on why and under what conditions states create NHRIs.<sup>17</sup> For instance, some states adopt NHRIs to deflect pressure aimed at their political regime or at human rights violations, even when the adoption may seem to be against their material self-interest. Examples of this include Suharto's decision to create Komnas Ham, the Indonesian NHRI (Carver 2000), and India's creation of the National Human Rights Commission of India (Goodman and Pegram 2011a, 10). And Amanda Whiting suggests that the government of Malaysia may have established an NHRI to assuage widespread criticism of the ill treatment of its former deputy prime minister (Whiting 2003, 77). Similarly, some states created NHRIs based on material calculations, hoping to polish up their image for foreign donors and to gain status in the international and regional communities (Renshaw and Fitzpatrick 2011).

However, these studies tend to assume that states create NHRIs primarily because of exogenous reasons; this assumption marginalizes states, treating them as helpless dependent variables that change in response to external variables—mainly pressure from the UN, other states, or nonstate actors and their networks. These studies are valuable in understanding *what* triggers states to create NHRIs, but they fail to recognize the state as the fundamental decision

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<sup>16</sup> The effectiveness of NHRIs has received sustained attention within both academic and policy circles. This discussion marks a departure from earlier contributions, which focus more narrowly on the legal form of NHRIs. Important initial advances in descriptive accounts can be found in Carver (2000), Reif (2004), Carver (2005), and Murray (2007).

<sup>17</sup> See Cardenas (2003a) and Koo and Ramirez (2009).



maker—an entity with full autonomy. This focus on external reasons is also limiting, as it cannot explain why states voluntarily accept NHRIs rather than adopting them as a result of external coercion. Although the process of creating NHRIs involves the interplay of multiple actors, states are almost always at the center of all decision making, regardless of the existence or extent of external pressure.

The following sections provide a review of studies that have attempted to answer why states create NHRIs, showing that these studies have typically focused on external factors such as the influence of international organizations and civil society groups.

### 2.5.1 Influence of International Organizations

Several empirical studies that examine state–NHRI relations focus on international organizations (IOs), which include the UN and its human rights bodies. Many scholars see IOs as the most significant agent in the establishment and strengthening of NHRIs. For example, Linda Reif, in her work analyzing various types of NHRIs, stresses the role played by the UN and the international community in the creation of NHRIs (Reif 2000). And according to Cardenas, “the diffusion of NHRIs would not have been possible with the active support provided by international organizations like the UN,” particularly in the areas of standard-setting, capacity building, network facilitating, and membership granting (Cardenas 2003a: 28). Cardenas presents a strong causal relation between UN assistance and the 1990s increase in the number of NHRIs, which also implies a positive causal relation between the development of the international human rights regime and the rise of NHRIs (Cardenas 2003a, 31).

Similarly, Pohjola argues that although many factors influenced the proliferation of NHRIs, the UN’s role was essential, as it “has actively advocated the expansion of national institutions” (Pohjola 2006, 1). The UN acknowledges this in the 2002 report of the UN

Secretary-General, which states that “building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement [. . .] or enhancement of a national protection system in each country [. . .] should therefore be a principal objective of the Organization” (United Nations General Assembly 2002, ¶ 50). In more recent work, Thomas Pegram has stressed the role of the UN Office of the High Commissioner for Human Rights (OHCHR) as a “dedicated orchestrator” in inducing states’ compliance with human rights through NHRIs (Pegram 2015). Other scholars also discuss the role played by the OHCHR’s leadership in promoting NHRIs (Sidoti 2011, Reif 2011).

These studies provide valuable insights into how international organizations orchestrate, regulate, and impose pressure on state behavior. These approaches, however, oversimplify the casual relation between state behavior and external pressure from IOs and international regimes, because they assume that states and their societies are passive, static entities. States do not establish NHRIs only because of influence from IOs. States create NHRIs for complicated reasons—perhaps more complicated than those behind the domestication of other international laws and standards. By adopting NHRIs, states not only incorporate international norms into their domestic system but also establish within their borders a permanent independent human rights agency, designed by themselves. The state and its society are not passive entities in this process; in fact, they exercise more autonomy and flexibility in designing the NHRI within their domestic sphere than they do when ratifying an existing treaty.

### 2.5.2 Nonstate Actors and Their Networks

Another well-studied exogenous variable is the role of nonstate actors and their networks. Increasing numbers of scholars highlight the role played by civil society groups, such as NGOs

and their transnational advocacy networks (TANs), in bringing effective pressure to bear on both IOs and states (Keck and Sikkink 1998; Reiman 2006). These arguments are convincing, as NGOs have become powerful, legitimized actors, both domestically and internationally. The UN has empowered NGOs through its international human rights regime making; like states, NGOs are invited to submit reports, participate in UN meetings, and make interventions as a legitimate actor in international society.

Civil society has also become increasingly influential in domestic state affairs (Risse-Kappen 1995, Reiman 2006). Because NHRIs are uniquely located between state and civil society (Smith 2006), research into NHRIs pays extensive attention to the work of NGOs, which are often treated as the single most important agent in making and sustaining NHRIs.

The Paris Principles, in their discussion of the composition of NHRIs, firmly state the importance of involving civil society in establishing and strengthening NHRIs, which must “ensure the pluralist representation of the social forces (of civil society) involved in the promotion and protection of human rights.” The Principles further direct that “effective cooperation [. . .] be established with, or through the presence of, representatives of nongovernmental organisations.” The Paris Principles recognize that NGOs are able to reach sectors of society that are often out of the focus or ambit of state institutions. When NHRIs are able to harness the ability of NGOs to connect with social groups at the grassroots level, they increase access for marginalized groups and individuals who might resist direct contact with a state entity, enabling them to bring issues of human rights protections to the NHRI, enhancing its effectiveness.

According to Kim, human rights NGOs pressured states to adopt the UN policy innovation of NHRIs; his cross-national statistical results show significant causality between

NGOs and NHRIs (Kim 2009a). Another study that focused specifically on NGOs in the Asia–Pacific region discusses the synergic effect that NGOs and NHRIs created in working together to protect and promote human rights in the region (Renshaw and Taylor 2008). However, whether NGOs play a role beyond catalysis is still an open question. The influence of NGOs varies in countries that have NHRIs. Some NHRIs were engaged with NGOs from the beginning, and others were founded with almost no influence from NGOs. However, a review of the literature indicates that NGOs have influenced the founding of an extraordinary number of NHRIs by creating environments conducive to the creation and better performance of NHRIs.

However, the relation of society and state should be examined in an integrated manner that considers their mutually transforming and constituting relationship (Migdal 2001). NGOs undeniably emerged as important actors in the international human rights movement; however, it makes more sense to study the interplay of NGOs with states rather than separating them into categories of “influencer” and “influenced.”

## 2.6 Conclusion

This chapter demonstrated how NHRIs became an “appropriate” institution that was widely accepted by many countries, one that was sometimes used to qualify a state as a democratic human rights states, respected by other peer states. This chapter first gave an overview of the development of NHRI norms at the international level, especially during the 1990s, when NHRIs proliferated globally in the wake of the end of the Cold War and the attendant democratization and strengthening of the global human rights regime. It also elaborated on the functions, diversity, and distinctive qualities of NHRIs.

In this chapter, I described the amount of autonomy states have in NHRI adoption process, thereby establishing why it is important to take states seriously. This chapter also reviewed different approaches to the scholarly study of NHRIs, showing that previous studies that examined why states create NHRIs mainly focus on exogenous factors (e.g., influence of international organizations, pressure from civil society, etc.). While these exogenous factors are useful in identifying variables that influenced state creation of NHRIs, I argue that this approach is ultimately limiting, as it marginalizes the fundamental role played by the states themselves in adopting NHRIs. I therefore propose an integrated approach that takes seriously both external factors and the state's autonomy in order to provide a full account of state motivations for creating NHRIs. In the next chapter, I examine the statehood of Korea and its state–society relationship through the lens of national identity, and I provide an objective answer to the question of why Korea chose to establish an NHRI.

## CHAPTER 3

### KOREA, *SEONJINGUK*, AND THE NHRCK

#### 3.1 Introduction

In previous chapters, I reviewed IR theories of compliance and provided explanations of the sudden worldwide proliferation of NHRIs in order to shed light on states' puzzling voluntary compliance with international norms, including NHRI norms. I also explained that studying compliance requires attention to the process by which international norms are diffused into the domestic sphere and described the ways this diffusion is affected by each country's historical and political contexts.

In this chapter, I examine how Korea's national identity was constructed by analyzing the pathways of Korean nation-building and the Korean modernization process through the changing definition of *seonjinkuk*. I explain how the identity of the Korean state and its society were constructed through its path to modernization, explaining why the country is so eager to pursue international legitimacy in order to become a *seonjinkuk*. The construction of the modern Korean state, and its contentious state–society relations, are crucial factors that have shaped Korea's adoption of an NHRI as well as the process of norms diffusion in Korean society.

This chapter then discusses the relevance of the logic of appropriateness in the Korean context, focusing on how Korea actively adopted international human rights norms to become *seonjinkuk*. More specifically, I argue that Korea's developmental identity encouraged the country to behave like “who they want to be” and to do what others think is “appropriate,” and that these behaviors included adopting international human rights norms and establishing an NHRI. This chapter demonstrates why Korea is such a suitable case study for the logic of

appropriateness, analyzing Korea's eager pursuit of international legitimacy through human rights policies in order to become *seonjingung*.

### 3.2 Korea's Nation-Building Process

#### 3.2.1 Korea's State-Centered Nation-Building in Modern Times

In the Western tradition, based as it is in the Western experience of nation-state building, industrialization, and modernization, the state and society are generally understood as two separate, distinctive entities. For example, Karl Marx argued that the state is an impediment to transforming the class structure, and that a unified civil society would eventually overthrow the state—a theory grounded in the opposition of state and society (Marx and Friedrich 1998, Marx 1998). Gramsci's notion of hegemony, which conceptualizes civil society less optimistically than Marx's theory, also assumes a distinction between state and society, although, according to Gramsci, hegemony is practiced by both: political hegemony by the state and social/cultural hegemony by society (Gramsci 1971). The industrialization of eighteenth- and nineteenth-century Western Europe produced this structure of state versus society and positioned society above the state, creating a kind of critical reluctance to grant autonomy to states—a feeling that is still prevalent in the era of neoliberalism. The triumphs of industrial capitalism, civil society, and the market seemed to justify the rejection of the state as a unit of analysis and as a central autonomous force. This distaste for the state is embedded in accounts of the rise of democracy in the West; history tells the story of the rise of civil society against various forms of states, such as feudalism and monarchy. According to the narrative of these economic and political events, relations between the state and society have always been oppositional and contentious.

Scholars eventually began to reframe this adversarial relation between state and society in more integrated terms (Mitchell 1991, Migdal 2001), and the study of state–society relations took a new turn, going “beyond the unnecessary dichotomy of these two approaches and [paying] direct attention to complex and dynamic relationships between the state and society and [to the] dialectic processes through which their relationships change” (Koo 1993, 231). Understanding state–society relations as they are today conceptualized, even in a single country, is a tricky matter. And in order to accurately characterize state–society relations, one must delve into one country’s nation-building process, historical contingencies, economic development, and democratization experiences.

How, then, were Korean state–society relations constructed? It seems accurate to say that “Korea’s path to modernity and industrialization is not determined by some immutable logic of modernism but by historical contingencies and a dialectical process of social change” (Koo 1993, 231). Other countries developed into modern nation-states in response to internal pressure from within their own societies; Korea’s processes of modernization and industrialization were initiated by an external force, the Japanese colonial rule of Korea from 1910 to 1945. The legacy of Japanese colonization in Korean modernization and economic development remains controversial, but it is an undeniably important element in understanding Korea’s past, present, and future, and many argue that the colonial legacy still influences Korea’s industrialization and economic development in the twenty-first century.

After Japanese colonization, Korean independence came in 1945, once again brought about by outsiders. Soon after independence, the nation underwent the Korean War (1950–1953), fighting against its own nation. The consequence of that war was the division of one nation into two different states, North and South Korea. This division did not only create a physical



separation; it also introduced a discrepancy between national identity (one nation) and state identity (two countries). The series of incidents that occurred at the birth of the nation-state of Korea—the Korean War, the separation of the nation, the United States military government—had an enormous and lasting impact, distorting the nation-building process, the state–society relations, and the political landscape. These historical contingencies that affected the nation-building process shaped the unique Korean economic development and democratization processes.

Understanding the initial deformation of the nation-building process is important to understanding Korea's current state–society relations, because the interpretation of the past remains an important political and economic agenda in Korea. After independence from Japan in 1945, one of the priorities for Koreans was how to handle people who had collaborated with Japanese rule. In dealing with this matter, the North and South of the Korean peninsula came to be represented by different ideological groups. The North mainly consisted of anti-Japanese, communist, and nationalist believers; the South was where pro-Japanese came to settle, not necessarily because they favored liberalism, but often because they were afraid of land reform under the communists, fearing confiscation of their property (Kim 2006). The South Korean groups constructed their society around a misrepresentation of liberal democracy—one founded on anti-communism and pro-Americanism, not upon traditional democratic values. These ideological and political viewpoints were strengthened during the Korean War, which increased the already strong national stigma against communism and was followed by the establishment of the Republic of Korea in 1948, with the support of the American government. This mixture of anti-communism and pro-Americanism, disguised as liberal democracy, at first provided

justifications for economic development and authoritarian dictatorship, but it eventually motivated social forces to mobilize and challenge the dictatorship.

Under these authoritarian regimes there was rapid economic development, especially from the 1960s to the 1980s; this development, driven by and centered on the Korean state, offers empirical evidence that, in the case of Korea, the typical Western position that the state has little authority is not applicable. The American political science tradition, which labored under pluralist and structure-functionalist perspectives until the 1970s, must revise its idea that the “strong state” is an outdated model and that the only way to successful economic development is through a free market and capital that is free from the hand of the state (Evans, Rueschemeyer, and Theda 1985). Korea’s late economic development, which was planned and executed entirely by the central state, is often described as state-directed development, or the developmental state.

Korea’s successful state-sponsored economic development does not fit with existing scholarly perspectives: it fits with neither the socialist model, in which both ownership and management remain in the hand of the state, nor the free market model, in which private control coincides with private ownership and there is minimum intervention from the state. Like that of its Northeast Asian neighbors, Korea’s economic development is best explained as a function of the plan-rational capitalist developmental state, which is a hybrid of private ownership and state control. There is no major disagreement over the fact that the Korean state and capitalists played joint roles in the state’s economic development; however, scholarly accounts offer differing explanations of where the developmental state model came from, what the developmental state’s key to success was, how state intervention was made possible, and (most importantly) how the developmental state affected state–society relations in Korea.

In a capitalist society, the major driving force for economic development comes from society—from private entities. But in some countries in Asia, especially Japan and Korea, the state has been deeply involved in economic development. According to Kohli, the successful Korean state-led development model grew out of the strong state legacy inherited from the Japanese colonial government (Kohli 2004). Kohli argues that Korean state–society relations, which were shaped by Japanese colonial rule—society complying with the strong state’s directions—were the key to Korea’s rapid economic development, which is characterized by cohesive–intensive industry. Bruce Comings acknowledges that while the Japanese did create a kind of developmental state in South Korea, it was a predatory state; he also notes that Korea had experienced rapid industrial growth before Japanese occupation—growth that cannot be explained by the Japanese inception of the developmental state (Woo-Cumings 1999a). Some authors also counter Kohli’s argument by pointing to the example of North Korea, whose economic development has not been as successful as South Korea’s, although both states share the same Japanese colonial legacy.

Other scholars are less interested in identifying the source of the Korean developmental state than in attempting to classify it. Evans, for example, who focuses on Korean state–society relations in his discussion of the Korean developmental state, defines the 1960s Rhee Seung-Man regime as being more predatory than developmental; he argues that Park Chung-hee’s regime successfully transformed Korean society because it realized the importance of state autonomy’s *embeddedness* within society (Evans 1995), and therefore began to incorporate the state into society by harnessing private entrepreneurship. The “embeddedness” approach taken under Park, Evans argues, was a much more “top down” affair than the Japanese model, and it was not always successful; for example, the Korean model produced a conglomerate business group

known as *Chaebol*, and the state–*Chaebol* relationship led to a very unproductive rent-seeking structure. During the early period of industrialization, Korea’s state–society boundary was blurrier than Western ones.

The developmental state was founded upon the Weberian concept of bureaucratic government, and bureaucratic capacities are thus also important in understanding state–society relations in developmental states. In Japan, for example, the highly competent bureaucrats at the Ministry of International Trade and Industry designed, planned, and led the market in accordance with the most logical economic sense, free from political intervention (Johnson 1982). The role of bureaucrats in Korea’s developmental state differed somewhat; Korea had a comparable state agency, but the bureaucrats there were never free from political intervention, and economic planning did not depend only on rational economic calculation—it also considered politics and security issues in creating economic policies. The Korean state economic policies gave too much power to a small group of market players, the aforementioned *Chaebol*. This economic society was incorporated with state power, and it enjoyed the protection of the state until the late 1990s.

The power of the Korean developmental state was not limited to its control over economic policies. Woo-Cumings states that “the power of the developmental state grows both out of the barrel of the gun and out of its ability to convince the population of its political, economic, and moral mandate” (Woo-Cumings 1999b, 20). Chang Ha-Joon argues that the developmental state’s importance lies in its ability to politically manage the economy, and the Korean authoritarian regime was very effective in spreading its political, economic, and moral hegemony, as its authority remained almost unassailable until the late 1980s (Chang 1999). The state hegemony may have been more effective because of Cold War politics and political interest groups that were welded into a developmental coalition.

Western economic development is often seen as being based on the differentiation of economic classes: the increasing importance of the bourgeois in the early industrialization stage, the collective actions of laborers, and the empowerment of the middle class that industrialization and capitalism depend upon (Poggi 1978). Capitalist development did not happen in this sequence in Korea, however. In Korea, economic development was rapidly adopted from outside, leaving no time for society to construct a notion of class. Because industrialization was led by the state under dictatorship, there was no time to build class capacities such as class consciousness, class organization, and class representation. In Western Europe, capitalists played a crucial *social* role in early industrialization, where they created class identities in society rather than affecting the state; in Korea, capitalists instead played a crucial role in forming the state itself. Under the authoritarian regime and the exploitative capitalists, who were working hand in hand with the state and were under its protection, there was very little room for Korean people to construct their own class identities in society. This shaped distinctive state–society relations in Korea.

To understand these state–society relations, we must take into account many variables that affect economic development and the emergence of democracy in Korea. Modernization theorists argue that economic development and democracy go hand in hand, but scholars disagree over which must come first. Some argue that economic development triggers democracy, because economic development politically empowers the middle class, whose demand for democracy is likely to be achieved. Others argue that democracy creates favorable circumstances for economic development and for the emergence of a middle class. However, neither of these accounts explains countries like Korea, where the state, not capitalism, directed economic development, and where economic development did not necessarily encourage

political democratization. For example, Korea underwent a long period of military authoritarianism during a period of great economic development, and it is questionable whether the middle class triggered democracy in Korea in the 1970s and 1980s; indeed, some argue that the middle class did not exist during that period. Many scholars argue that two variables, economic development and democracy, are not enough to explain state–society relations; changes in class and social structures caused by industrialization and urbanization are also likely to produce democracy. According to these scholars, democracy is about power and power sharing, and they argue that it is crucial to understand variables that they call “power clusters,” which include the balance of class power, the nature of the state and state–society relations, and international political geography (Rueschemeyer, Huber, and Stephens 1992). Taking these “power clusters” into account opens up possibilities for accurate and precise interpretation of Korea’s state–society relations.

As I have explained, Korea, economic development was directed by the state, capitalists were collaborators with the authoritarian military regime, and the middle class was not empowered; what, then, triggered the democratization of Korea? How was political change possible under the authoritarian regime? And how did democratization restructure state–society relations? The path to democracy in Korea did not happen “logically,” as it did in Western European countries; it happened as a product of contingent events. And although most people believe that democracy was realized in Korea with the fall of the authoritarian military regime in 1987, Korea had actually foreseen its “predestined” type of liberal democracy in the influence of the United States at the birth of Korea’s modern nation-state under the United States military government. This is completely unlike any Western country’s organic experience of democratization: from Korea’s very birth, its eventual political system was a given. Liberal

democracy was predestined for Korea by outsiders, rather than growing out of Korean society and people. And in the 1990s, the gap between the official liberal democratic government and the authoritarian reality created opposing civil societies in Korea. It is thus accurate to say that “Korea’s democracy is both old and new” (Alagappa 2004, 138). More importantly, Korea’s political regime, created without the support of the Korean people, had to seek legitimacy in other ways; the authoritarian regime lacked internal legitimacy, and so it would pursue international legitimacy, seeking approval and recognition from peer countries.

During this period, there was worldwide excitement about the victories of democracy: “by the mid-1990s, liberal political leaders, scholars, and activists were celebrating the triumph of democracy, free market capitalism, and human rights throughout the world” (Alagappa 2004, 3). This worldwide wave of democratization wave washed over Korea, although Korea’s transition from authoritarian regime to democracy and its democratic consolidation process were extolled as exceptional: Korea “tend[s] to place greater emphasis on individual rights [. . .] these cultural values of individualism and authoritarianism [. . .] are likely to help Korea stay on the path to the further democratization that consolidated democracies in Europe took many decades to achieve” (Diamond and Shin 2000, 36). Amid the excitement, questions still remain. Who was the agent of this political change? Did it happen with the mobilized power of the new class, through a labor movement, or through something else?

Any discussion of democratization in Korea must take *Minjung* into account. *Minjung* is a unique concept that emerged through a series of social movements in Korea; it resisted the authoritarian regime and eventually, in 1987, achieved the collapse of that regime. *Minjung* means roughly a social group of oppressed people. Lee Namhee elaborates on the concept, saying that *Minjung* is a “materially or historically grounded” notion (Lee 2007, 6) that defines

those who are “capable of rising up” against oppression (Lee 2007, 5). The 1980s discourse on *Minjung* provides a good example of the interplay of power and resistance and the mutual constitution of state and society. According to Lee, *Minjung*, a mobilized association of students, intellectuals, and workers, grew out of the realization of the “failure of Korean history”: the group reminded the world of the 1980 Gwangju Massacre and of the United States’ inaction in the face of the regime’s military violence. *Minjung* recognized that Korea had failed to own its own history and destiny, and the group built their identity upon the notion of historical subjectivity, opposing the state hegemony and aiming to emancipate the whole society. The Korean social movement of the 1980s, centered on *Minjung*, created a counterpublic sphere in which “the practitioners developed counterdiscourses that challenged the state-established public agenda and redefined the grounds of social and political discourses in Korea in the 1980s” (Lee 2007, 2); however, some scholars argue that the *Minjung* practitioners employed the same hegemonic discourses as the authoritarian regime they opposed, and it is still questionable whether they were truly democratic. Some scholars, like Choi Jang-jip, are critical of the *Minjung* way of resistance. Jang-jip argues that civil movements in the 1980s should not have chosen to resist the regime from outside, but should instead have tried to be politically institutionalized—that is, they should have fought the system from within (Choi 2005). However, others question whether the social forces resisting authoritarianism in the 1980s had any choice but to create a counter-hegemonic sphere. While incorporation into political society sounds ideal, that was not an option under the circumstances, because under the authoritarian regime, political society and civil society were strictly separated.

While *Minjung* practitioners played a significant role in Korea’s democratization, other social groups, such as urban middle-class people, also supported the movement to bring down



the authoritarian regime. Lee Namhee argues that “the energy of Korean democratization in the ’80s, stems from the findings and awakening of the collectivity, *Minjung*, rather than [framing] the emancipation of individuals as classical liberal democratic thinkers would envision” (Lee 2007). What happened to this once densely mobilized political power base in Korea in the 1980s? Did the coalition break down because of the lack of common class identities, or did they dissolve because democratization was achieved? There may be no one simple answer to this question. But following the ’80s *Minjung* movement, another social movement was born in the 1990s—a movement based upon liberal democratic values: liberty, emancipation of individuals, human rights, and civil societies.

### 3.2.2 State–Society Relations Since the 1990s

The ’80s movement changed Korean state–society relations, bringing down the dictatorship and creating space for civil society. But after the economic development and political democratization of the 1980s, the social force that had effectively resisted the authoritarian regime dissolved and fragmented, because their association was based on being against the authoritarian regime, not on shared class identity and association. After achieving their common goal, they drifted back to where they had come from. The rapidly formed urban middle class, an important part of the resistance to the dictatorship, went back to their daily lives; the labor unions of the 1980s narrowed into interest groups in the 1990s; and the nationalistic intellectuals were influenced by the notion of “professionalization,” which shaped their activity, identity, and organization in the 1990s. As Kim Dae-jung, the former president of Korea, noted, professionalization demanded society’s intellectuals to provide expert testimony to the state and the market; the dominant mode of intellectuals’ social participation thus changed in the 1990s from “political” to “cultural” (Lee 2007, 300). These groups—the middle class, the labor unions

and the nationalistic intellectuals—became the key actors in initiating and strengthening the dominant social norms of the 1990s, such as NGO movements, participatory democracy, and individualism.

Another major structural change occurred in Korean state–society relations after 1997. The Korean financial crisis of 1997–98, which occurred amid rapid globalization, shaped the Korean state and society in accordance with neoliberalism. The financial crisis revealed old problems caused by long-term state manipulation of the Korean financial structure, and the accumulated mistakes of the developmental state erupted in the crisis. However, the emergence of neoliberalism in Korea did not downsize the strong state; instead, it resurrected the authoritarian developmental bureaucrats, newly dressed in free market values (Kim 2006, 106). The developmental state, which had convinced the population that its developmental, economic, and moral mandates were correct, was now able to convince the people that the free market was the only way to break through the national financial crisis. Kim Dongchun claims that the strong market force that had been fostered by the state since the 1960s was finally able to colonize Korean society during this period (Kim 2006).

But why did the civil society that took down the authoritarian regime become vulnerable once again to the state hegemony? The answer can be found in how the characteristics of society changed in the 1990s. In accordance with the worldwide trend, Korean civil society in the 1990s moved toward the values of individualism, the rule of law, citizen participation, and human rights. The number of NGOs on the ground, and the scope of the work they did, expanded greatly in the 1990s, seemingly suggesting that democracy was being consolidated; according to the perspective of the liberal democratic school, the aim of civil society is to “liberate society [. . .], recover social autonomy, [and] expand civil liberties and human rights” (Alagappa 2004, 31), but

the expansion of civil society does not always mean the expansion of democracy. For example, in Japan, there are great numbers of NGOs that are densely networked with each other, but they tend to be powerless and unable to mobilize effectively around political issues (Lee and Arrington 2008). The problem in Japan is with the characteristics and capacities of the mobilized power, which is very strong on cultural issues but weak on political issues; this is because after democratization, Japanese civil society groups shifted their goals from political ones to cultural ones, as civil society groups did in Korea.

Civil society's efforts, which are based upon liberal democratic values, are expected to make the state more accountable and more responsive to the demands of civil society itself (Schedler, Diamond, and Plattner 1999). However, civil society must develop its activities within the public sphere established by the state; citizens' movements show how civil society works within the "citizen" identity, which can only be realized in relation to the state. The methods of 1990s Korean civil society relied heavily on campaigning to change public opinion and on lawsuits—techniques that operate within the system, rather than fighting the system from outside, as it had done before. The counterpublic sphere, which had allowed society to build counterdiscourses against state hegemony, no longer existed in the 1990s, because the citizens' movement that replaced the social movement of the 1980s worked *inside* the hegemonic public sphere defined by the state.

It is important to understand the structural changes that have taken place in Korea since 1997 in order to fully grasp the domestic political terrain into which NHRI norms were adopted. The establishment of the NHRCK was made possible by the political regime change in the late 1990s, because the new regime was more engaged with human rights. I analyze the discourses

around the NHRCK's creation, consolidation, and regression processes in the context of the Korean state–society relations at that time.

### 3.3 Identity, the Logic of Appropriateness, and International Legitimacy

Because of Korea's nation-building process and its modern political history, Korea is keenly conscious of how other countries see it and has been actively promoting international norms in its domestic space. But not all states seek to obtain international legitimacy in this same way; Korea's desire for international legitimacy is “historically contingent, context based, and intersubjective” (Flowers 2009, 26). There are two faces of sovereignty, internal and international, and in Korea, they do not coincide (Lake 2007). Because of the decades of authoritarian rule in Korea, Korea had weak grounds of internal sovereignty; the Korean political elites, lacking internal legitimacy, had to rely on outside recognition. This created a distorted state that is more concerned with international reputation than with their own citizens' opinions of it (Kim 2006).

The recognition or approval of other countries—especially of rich, advanced countries—is central to Korea's highly sensitive intersubjective national identity. In this section, I provide an analysis of Korea's desired identity—becoming a *seonjingung*—a goal that has been in place since the establishment of the country, with some variations depending on political regimes. I also explain how this desired identity was expressed in concrete policies that attempted to obtain international legitimacy by doing what other *seonjin* states were doing.

#### 3.3.1 Korea's National Goal of Being *Seonjingung*

The concept of *seonjingung* is historically created, and it has been constructed and reconstructed throughout Korea's history, beginning with Korea's very first political regime, led

by its first president, Rhee Seung-man. Kim Jongtae argues that the *seonjinguk* discourse in Korea developed out of a Eurocentric development model that made hierarchical distinctions between *seonjinguk* (developed country) and *hujinguk* (underdeveloped country), and that Korea rejected their own previous *hujinguk* identity in its attempts to “catch up” with or become *seonjin* (Kim 2011a, Kim 2012b).<sup>18</sup> Similarly, John Jojin contends that the *seonjinguk* identity, which became important to Korea in the initial stage of modernization in the 1960s, became “the most influential discursive framework for the interpretation of Korean national identity in the world” (John 2015, 41). *Seonjinguk* has not only been a desired identity but a Korean national goal since the establishment of the country.

The *seonjinguk* identity has changed its characteristics over time, reflecting changes in Korea’s conditions and different political regimes’ specific policy preferences.<sup>19</sup> According to Kim, *seonjinguk* has remained a goal for all regimes, but the what it means to be a *seonjinguk* has changed with each regime: the definition of *seonjinguk* is “affected by various factors at the national and global levels, such as governmental goals and policies, public sentiments and participation, world political economic situation, and global discourses” (Kim 2011b, 325). He argues that during Park Chung-hee’s era (1963–1979), the Korean national identity was drastically downgraded to *hujinguk* status, and that during this period, Korean *seonjinguk* discourse focused on escaping *hujinguk* status and problematized the status of underdevelopment. The same model of *seonjinguk* discourse characterized the regimes of Chun Doo-hwan and Roh

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<sup>18</sup> In the post-World War II era, development became another unit of analysis that provides the theoretical framework in discussions of national identity and countries’ worldviews. See Escobar (1995) and Nederveen (2009).

<sup>19</sup> Drawing on post-structural theories of identity, De Cella argues that national identities are specific forms of discursive social identities, produced, reproduced, transformed, and destroyed by means of language and other semiotic systems (De Cella et al. 1999, 153). De Cella assumes that there is no single national identity in an essentializing sense; different identities are discursively constructed and correspond to context, social field, situational setting of the discursive act, and the topic being discussed. Thus, De Cella suggests that national identities should be understood as dynamic, fragile, vulnerable, and often incoherent against the conventional understanding of national identity as consistent, stable and immutable (De Cella et al. 1999, 154).

Tae-woo (1980–1993), which largely followed the model set out by Park Chung-hee: economic growth based on anti-communism and nationalism (Kim 2013).

Under Kim Young-sam's administration (1993–1997), *seonjingung* changed course as the regime took notable pains to meet “global standards”—a goal that was touted as a method of achieving *seonjingung*.<sup>20</sup> With its avid interest in globalization in the post–Cold War period, the Korean government also vigorously pursued *seggyehwa* (globalization), which was viewed as a suitable way for Korea to become *seonjingung* (John 2015, 40–41). According to Kim, *seonjingung* during this period had three distinctive characteristics: (1) the desire to be *seonjingung* was far stronger under Kim Young-sam's administration than during any other period, (2) the national goal of achieving *seonjingung* status was widely shared by a broad range of Korean citizens, and (3) the efforts to become *seonjingung* were not limited to few fields of industry or technology, but appeared in every corner of society (Kim 2011b, 329–338). As Kim summarizes it, “the discourse of *seonjingung* far strengthened its hegemonic status in this period as a dominant way of representing national self and the world” (Kim 2011b, 332).

The zeal to become *seonjingung* continued under Kim Dae-jung (1998–2002), becoming more aggressively neoliberalistic. In the late 1990s, the IMF intervention into the Korean economy provided justification for transforming the economic system; neoliberalism was seen as the only way to survive in the face of global competition. During this period, *seonjingung* discourse became ever more popular and efforts to meet global standards became naturalized, achieving “taken-for-granted” status (Kim 2011b, 342). What is notable during this period is the conflation under *seonjingung* of three separate Korean national identities: the identity being promulgated by Kim's regime, the global “appropriate” identity based on democracy and human

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<sup>20</sup> Cho (2003) states that this change was a transition from the old developmental model to a “neo-developmental regime” based on the neo-modernization discourse of *seggyehwa*.

rights, and the long-lasting *seonjingung* identity. While Kim's regime prioritized a quick graduation from the IMF in its attempts to become *seonjingung*, the "promotion of human rights" element of the *seonjingung* identity gathered increasing momentum during Roh Moo-hyun's administration. The Roh Moo-hyun regime actively promoted human rights as a policy preference, and it was under these two regimes— Kim Dae-jung and Roh Moo-hyun—that the NHRCK was created and consolidated.

In an initial assessment of Lee Myung-bak's administration, which followed Roh Moo-hyun's (2003–2007), Scott Snyder states that one of the two core objectives of the regime was its "desire to be recognized as having the international stature commensurate with [its] accomplishments" (Snyder 2009, 43). Jojin John argues that under the articulated slogan of "Global Korea," Lee's administration vigorously pursued *seonjingung* status, mainly through neoliberal economic policies and through hosting major international meetings such as G20. Hosting these meetings was seen both as an achievement and as an indication that Korea was advancing shoulder to shoulder with other rich, advanced countries (John 2015). In a reflection of this administration's conservative identity, human rights were never a priority for Lee, despite his pursuit of *seonjingung* and his attempts to meet global standards; indeed, under Lee, the definition of *seonjingung* changed to reflect his administration's priorities, losing its emphasis on human rights and gaining additional emphasis on economic success.

In sum, even though each administration has a unique, characteristic definition of *seonjingung* and different policies for achieving their vision of *seonjingung*, the discourse on *seonjingung* in Korea consistently represents a conventional notion of a modernization project whose developmental model is Western modernity (Smith 1973; Webster 1984; Rist 1997; Mehmet 1999). Indeed, Kim states that the discourse on *seonjingung* has a tendency to

“circumscribe South Koreans’ imagination within the conventional modern paradigm” (Kim 2011b, 345). The near-universal discourse of *seonjinguk* in Korea meant that pressure to meet global standards was applied in every aspect of Korean public life, including Korean foreign policy (John 2015, 40), and it therefore became increasingly important for Korea to vigorously adopt and comply with global human rights laws and norms.

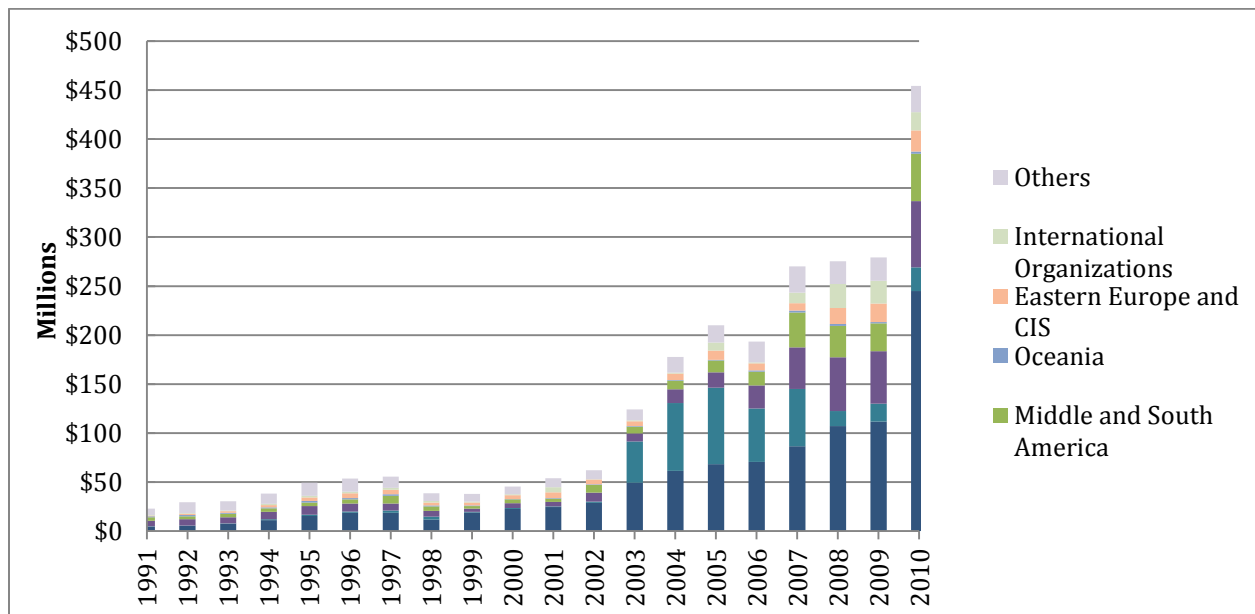
### 3.3.2 Becoming *Seonjinguk*: Doing What Other *Seonjin* States Do

Korea’s goal of achieving *seonjinguk* status prevailed in every corner of society and shaped a wide range of policies aimed at doing what *seonjinguk* countries do. This section provides concrete examples of Korea’s international legitimacy-seeking activities that followed the logic of appropriateness and were carried out in Korea’s attempt to be *seonjinguk*.

One such legitimacy-seeking activity was the establishment of the Korea International Cooperation Agency (KOICA) on April 1, 1991, to implement the government’s grant aid and technical cooperation programs. KOICA followed the models of such agencies in other *seonjinguk* countries, such as the United States Agency for International Development (established 1961), the Canadian International Development Agency (established 1968), and the Japan International Cooperation Agency (established 1974). The effort to claim international legitimacy through KOICA has been continuously growing, as have the funds disbursed through the agency (see Figure 2). In the early 1990s, Korea attempted to change its image from that of a recipient of aid to that of a donor of aid through government agencies such as KOICA—a direct attempt to reach *seonjinguk* status by imitating other advanced countries.



Figure 2 South Korea's Official Development Assistance, 1991–2010



Source: KOICA. Data collected and sorted by the author.

An excellent example of how deeply Korea has been influenced by international norms is found in a study on the decline of son preference in Korea (Chung and Gupta 2007). In this comparative study of four countries in Asia that traditionally prefer a male child over a female child (China, India, Northwest India, and Korea), only Korea's son preference declined in the 1990s; the authors explain this puzzling exception by reference to Korea's membership to the Organization for Economic Co-operation and Development (OECD; Chung and Gupta 2007). This study shows that, following Korea's entry into OECD membership, the Korean government's new public policies changed local son preference norms; son preference was not appropriate in *seonjin* Korea.

Korea's lack of a strong sense of its own legitimacy made Korea imitate other *seonjinguk*. Koreans did not feel confident about what they should or should not do; they felt far more

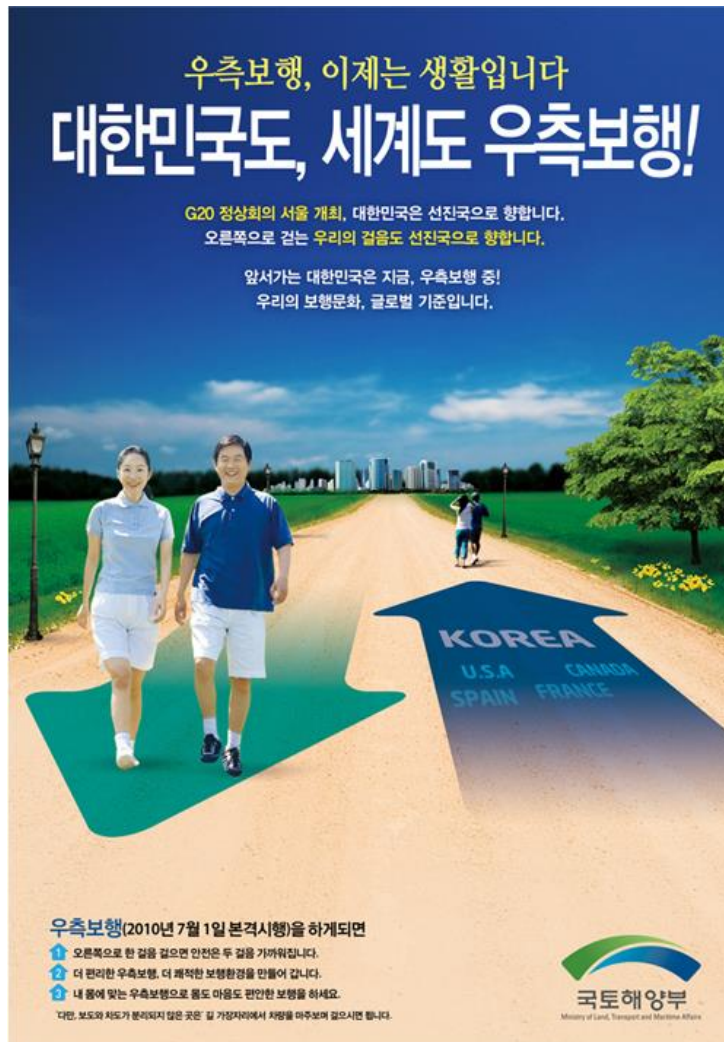
comfortable following what people in rich countries did, because following rich countries gave Koreans a sense of confidence that they were imitating appropriate behavior. For example, education and social regulations focused on teaching and enforcing behaviors from developed countries. One of the major newspaper corporations, Kyunghyang Shinmun, delivered a series of civic campaigns in the early 1990s on “the kindness campaign of the world—what people in foreign countries do.” The exemplary “foreign countries” were all Western European and North American countries. Such newspaper campaigns targeting the general public illustrate how the developmental agenda controlled not only economic mandates but also social and cultural mandates.

A campaign executed by the Ministry of Land, Transport and Maritime urged citizens to “walk on the right side of the road”—a shift from the previous recommendation to walk on the left. This campaign presents an especially interesting case; the government was attempting to persuade its citizens to walk on the right side because that is what the *seonjin* world (e.g., USA, Canada, Spain and France) does. The campaign suggests that by meeting this global standard, Korea will be walking toward *seonjingu* (see Figure 3). There is nothing wrong with the government promoting the best way of doing things in their own country, of course, but we must pay attention to the rationale behind it. There are other practical reasons for encouraging pedestrians to walk on the right side, but it is notable that the Korean government decided to use becoming a *seonjingu* as its tool of persuasion in this campaign.

These attempts to use the Korean desire to be *seonjingu* as a tool of persuasion were not always successful. For example, the mayor of Gwangju promised in his election manifesto to have the city enrolled as a United Nations–designated Human Rights City; however, after winning the election, he found out that it would be impossible for Gwangju to receive the

designation, because it does not exist (Huh 2010). Whether or not this particular election promise enabled him to win, it seems that even local politicians saw international human rights legitimacy and the desire to be *seonjingung* as attractive strategies. These seemingly trivial campaigns are grounded in constituents' presumed desire to become like the citizens of developed countries, and this zeal for becoming *seonjingung* is treated as a legitimate motive, indicating Korea's eagerness for global acceptance.

Figure 3 Government poster promoting “Walk on the Right Side of the Road”



Source: (KoROAD, n.d.).

### 3.4 NHRCK as a Means to Become a *Seonjin* Human Rights State

Korea's desire to be *seonjinguk* reached the level of hegemony in the 1990s, coinciding with the moment when human rights and NHRI norms became widely accepted around the

globe.<sup>21</sup> In 1991, Korea, along with North Korea, joined the UN; Korea became a member of the OECD in 1996, which was extolled as a great step toward becoming *seonjinguk*. In the early 1990s, Korea, like most other states in the world, ratified two significant human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>22</sup> as well as the Convention on the Rights of the Child and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (see Table 1).

Table 1. *Ratification of International Human Rights and Relevant Treaties in the 1990s*

Treaty title	Global records		Korea's records	
	Date of adoption (entry into force)	Number of state parties*	Date of accession	Date of entry into force
International Covenant on Economic, Social and Cultural Rights	<i>Dec. 16, 1966.</i> <i>(Jan. 3, 1976)</i>	149 <i>June 3, 2004</i>	Apr. 10, 1990	July 10, 1990
International Covenant on Civil and Political Rights	<i>Dec. 16, 1966</i> <i>(Mar. 23, 1976)</i>	152 <i>June 3, 2004</i>	Apr. 10, 1990	July 10, 1990
Optional Protocol to the International Covenant on	<i>Dec. 16, 1966</i> <i>(Mar. 23, 1976)</i>	104 <i>June 3, 2004</i>	Apr. 10, 1990	July 10, 1990

<sup>21</sup> See chapter 2 for a discussion of the standardization of human rights and NHRIs.

<sup>22</sup> In addition to these two conventions, Korea also ratified the Optional Protocol to ICCPR, which allows individuals in Korea to claim violation of rights contained in the ICCPR directly to the monitoring body of the ICCPR. In general, states are reluctant to ratify the Optional Protocols because they are perceived as being too intrusive on state sovereignty.

## Civil and Political Rights

Convention on the Rights of the Child	<i>Nov. 20, 1989</i> <i>(Sep. 2, 1990)</i>	192 <i>June 3, 2004</i>	Nov. 20, 1991	Dec. 20, 1991
Convention Concerning Employment Policy (No.122)	<i>July 9, 1964</i> <i>(July 15, 1966)</i>	94 <i>Dec. 17, 2003</i>	Dec. 9, 1992	Dec. 9, 1993
Convention Relating to the Status of Refugees	<i>July 28, 1951</i> <i>(Apr. 22, 1954)</i>	140 <i>Feb. 5, 2002</i>	Dec. 3, 1992	Mar. 3, 1993
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	<i>Dec. 10, 1984</i> <i>(June 26, 1987)</i>	136 <i>June 3, 2004</i>	Jan. 9, 1995	Feb. 8, 1995
Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No.100)	<i>June 29, 1951</i> <i>(May 23, 1953)</i>	161 <i>Dec. 17, 2003</i>	Dec. 8, 1997	Dec. 8, 1998
Convention Concerning Discrimination in respect to Employment and Occupation (No.111)	<i>(June 15, 1960)</i>	159 <i>Dec. 17, 2003</i>	Dec. 4, 1998	Dec. 4, 1999

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*Source: NHRCK 2003, 167–168.*

\*as of date indicated.

Since this period, Korea's intersubjective identity led it to seek recognition from others in pursuit of *seonjingung* status and to actively shape its policies toward adopting global standards, including prevailing global human rights norms and the adoption of NHRIs (Kim 2016).

### 3.5 Conclusion

In this chapter, I examined Korea's state-society relations and reviewed the state-building and identity-construction processes that produced these relations in order to unpack Korea's desire to become *seonjingung*—a desire that, in combination with the logic of appropriateness, offers important context for understanding why Korea accepted global human rights norms. Korea saw accepting these norms as a means of reaching its long-standing national goal of becoming *seonjingung*.

In the following chapters, I will examine the history and trajectory of the NHRCK, including its creation (1993–2002), strengthening (2003–2007), and weakening (2008–2012). I will show how Korea's pursuit of international legitimacy affected each stage of the process. I will also address different political regimes' differing definitions of *seonjingung* identity, which produced different policy preferences: some regimes embraced human rights and others deliberately excluded human rights in their policy making, although all political regimes, whether conservative or progressive, desired the developmental state *seonjin* identity. By tracing these changes in domestic politics and context, I lay the groundwork for my examination of the diffusion of global human rights norms in Korea's domestic sphere over time, which enables me to show that national identity and state interests are neither static nor timeless.

## CHAPTER 4

### ESTABLISHMENT OF THE NHRCK (1993–2002)

*The enactment of the National Human Rights Commission of Korea Act and the establishment of the Commission serve as a momentum for Korea to leap toward human rights seonjinguk.*

—President Kim Dae-jung’s remarks after appointing commissioners for the NHRCK

October 9, 2001 (NHRCK 2009)

*[The establishment of the NHRCK] is the realistic and indisputable institutional mechanism to enter into the human rights seonjinguk.*

—First Chairperson of the NHRCK, Kim Chang-guk

November 7, 2001 (Kim 2001)

#### 4.1 Introduction

This chapter traces the processes of norm diffusion and political negotiation in Korea between the 1990s and 2002 as it discusses how the NHRCK was established. Because “the conditions under which states create a permanent national institution that can hold themselves accountable and impose unexpected sociopolitical constraints on their policies on the human rights issues” (Kim 2009a, 11) are still not clear, in this chapter, I will explicate the conditions—the interplay of domestic and international contexts—that laid the groundwork for the establishment of the NHRCK. I will demonstrate how the international human rights norms represented by the NHRCK were determinant in shaping Korean state policy preferences to



ensure that the NHRCK was established as an independent institution, despite years of rigorous opposition from the Ministry of Justice. In so doing, I will show how the effectively coordinated advocacy of domestic and international agents strategically appealed to Korea's desire to seek international legitimacy by meeting global human rights standards—in this case, by creating the NHRCK in accordance with the Paris Principles. By laying out the establishment process in detail, I will also show the importance of the Korean domestic context in norm diffusion.

First, I discuss how the global norms around NHRIs were introduced and diffused between 1993 and 1997—the same period during which Korea ratified several human rights treaties to meet the “global standards” of *seonjinguk* countries. Then, I move on to the actual establishment process, which required more than three years of negotiations among various actors, including the president, the Ministry of Justice, domestic NGOs, and international human rights communities. All these actors appropriated the desired *seonjinguk* identity to attempt to persuade each other to create the NHRI they envisioned. This section identifies a critical catalyst in this process, the Nobel Prize Committee's announcement in 2000 that President Kim was to receive the Nobel Peace Prize, which ended the three-year struggle over the establishment of the NHRCK. Finally, I provide an assessment of the NHRCK one year into its operation under Kim Dae-jung and show that at this time, the NHRCK was not yet firmly rooted in Korean society.

## 4.2 Korea's Awakening to NHRIs (1993–1997)

### 4.2.1 Introduction of NHRIs to Korea

How did global norms about NHRIs travel to Korea? The very first contact was made by a group of human rights activists who participated in the World Conference on Human Rights in Vienna in 1993, where the global norms on NHRIs were actively discussed (NHRCK 2002A, 5).

A group of Korean NGOs participated in the conference; their participation influenced the domestic human rights NGOs and paved the way for the eventual creation of the NHRCK. At the conference, Korean activists were exposed to the global human rights forum and established an initial network with transnational human rights activists. The experience of the 1993 Vienna conference is vividly captured in the words of South Korean human rights activists from the Sarangbang Group for Human Rights, published in newsletters put out after the conference, and which Kim (2009) reproduces:

Vienna was a great cultural shock. Not just our organization but also Korea's human rights movements became aware of international human rights for the first time. Strictly speaking, we knew them already, but Vienna introduced a showcase for internationalization to us... Originally, the Vienna Conference was an intergovernmental meeting, but NGOs gathered together to form a bazaar. I learned a lot from there, and there were many new and wonderful things there. At that time, I also came to know about 'East Timor' for the first time in my life... International solidarity had always belonged to only a handful of organizations in our society. After Vienna, it spread as something that all the movements shared... I had never bothered to take a look at the Universal Declaration of Human Rights and the International Covenants, but I felt it necessary to study them. I also realized that there is more to international solidarity than just calling for help to solve our problems. I learned all I had to know all at once for a fleeting moment... To tell the truth, we heard discussions about the establishment of national human rights institutions through Vienna (Sarangbang Group for Human Rights 2002, 51–52; quoted in Kim 2009a, 214).

According to Kim's analysis, the Korean NGO participants who attended the conference learned there about UN policy innovations in the human rights field, including the Paris Principles. Upon returning home, they used this new knowledge to frame and orient their activism in two main ways (Kim 2009a). First, they mainstreamed the idea of NHRIs and the Paris Principles within the domestic human rights activist groups. The Sarangbang Group for Human Rights, a leading Korean human rights organization, was part of the NGO delegation to the 1993 Vienna Conference, and on July 15, 1994, they published a special issue of *Human Rights Daily News* about NHRIs, in which they suggested that NHRIs were a feasible institution for remedying human rights problems in Korea. The *News* issue covered the history of NHRIs, the 1991 Paris Principles, the 1993 Vienna Declaration and Programme of Action, the types of NHRIs, and the criteria that marked an independent, effective, and credible NHRI.

#### 4.2.2 Diffusion of NHRIs in Korea

After they were introduced to NHRIs, Korean human rights NGOs demanded that the government establish an NHRI to promote and protect human rights and to restrain abuses of state power. In June 1993, the NGO participants who attended the Vienna Conference submitted their written opinion urging the Korean government to enact a comprehensive human rights law and to establish an NHRI. Later, in 1998, human rights NGOs organized a committee called the Joint Committee of the Korean NGOs Coalition for Enacting the Human Rights Law and Establishing the National Human Rights Commission. Korean NGOs also participated in the third UN Workshop for the Asian and Pacific Region on Human Rights Issues, held in Seoul from July 18 to July 20, 1994, where they reiterated their position on the establishment of an NHRI in Korea. In November 1995, during the celebration of the fiftieth anniversary of Korea's Independence Day, nine NGOs hosted an international meeting called the Symposium on South

Korea's National Security Law, the Post-Cold War New International Order and Human Rights in Seoul. After the symposium, Korean NGOs, supported by transnational human rights NGOs that included Amnesty International, the International Center against Censorship, SOS Torture, and HURIGHTS OSAKA, again urged the Korean government to establish an NHRI (Kim 2009a, 216).

After the 1993 World Conference, a group of NGOs who had participated in the Asia-Pacific Human Rights Conference held in New Delhi in November 1996 demanded the establishment of a Korean NHRI (NHRCK 2002A, 6). Although the political regime at the time, the government of Kim Young-sam (February 1993–February 1998), was very interested in meeting global standards in order to become *seonjinguk*, the government remained mostly indifferent to these calls for the establishment of an NHRI. There are a few possible explanations for this indifference. It could be that there was not enough time; the concept had only been introduced in 1993, and perhaps the Korean state and society needed time to understand what NHRIs were, and what the implications of establishing one would be. It could be because Kim's regime felt Korea had already earned enough international legitimacy in the field of human rights; Korea had become a UN member in 1991 and ratified two key international human rights treaties in 1990. It could be that the government assumed that the inauguration of Korea's first nonmilitary government indicated sufficient human rights improvement (Baek 2002, 31). Or it could be that the call was made at the wrong moment; according to Lee Seong-hoon, the executive director of the Korean Human Rights Foundation and the former Human Rights Policy Director at the NHRCK, the call for a Korean NHRI went unanswered at the time because NGOs

had other human rights issues to deal with that took priority.<sup>23</sup> Although an NHRI was not established during this time, Korean society became aware of the global norms around NHRIs.

#### 4.3 NHRCK as a Policy Agenda during the Presidential Election in 1997

##### 4.3.1 Kim Dae-jung's Political Determination

The breakthrough for the efforts to establish a Korean NHRI came from a political opportunity. One of the presidential candidates, and the eventual winner of the presidential race, was Kim Dae-jung, who made a campaign promise in December 1997 to establish an NHRI if he were elected. After winning the election, President Kim adopted the “legislation of the Human Rights Commission Act and establishment of the National Human Rights Commission” as one of “One Hundred Main National Tasks” of the new administration (NHRCK 2002A, 6). Kim Dae-jung was the only candidate that accepted Amnesty International’s recommendation to create an NHRI;<sup>24</sup> human rights were an important standard in shaping the policies of the Kim administration (Ahn 2009a, 55). During his term, Kim Dae-jung put a lot of effort into promoting human rights legislation, including the Law on Compensation for the Democratization Movement, the Law on the Investigation of Suspicious Death, and the National Human Rights Committee Act. He also supported the revision of the controversial National Security Law.

Kim Dae-jung was firmly committed to establishing an NHRI, although detailed plans for the NHRI’s structure and capacities were not yet spelled out. Park Kyung-seo, the former Ambassador in Human Rights at Large, explained that President Kim’s political will was a key

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<sup>23</sup> Lee, Seong-hoon (executive director of the Korean Human Rights Foundation and the former Human Rights Policy Director at the NHRCK). Interview with the author, September 16, 2010; copy on file with author.

<sup>24</sup> Published on October 16, 1997, in Amnesty International’s letter entitled “South Korea: A human Rights Agenda for The Presidential Election: Open Letter to All Candidates.” This letter called the candidates to create an NHRI should they be elected (Amnesty International 1997).

determinant in bringing to the table the issue of establishing an NHRI in Korea (Park 2010).

Kim's pledge to create an NHRI may have been influenced by his political background; Kim is known as the "Nelson Mandela of Asia." According to Koo, Kim's commitment to human rights and his determination to create an NHRI, risking its possible constraints on state sovereignty, were rooted in Kim's own experiences of being oppressed by authoritarian governments for decades. Kim was at one time sentenced to death, and he underwent several years of imprisonment, exile, and house arrest; these experiences led Kim to want to be "the president of human rights" (Koo 2011b, 87); as president, he strategically used the discourse of international human rights and emphasized the state's commitment to international human rights standards (Koo 2011b, 87).<sup>25</sup>

#### 4.3.2 NGO Advocacy's Effect on Kim's Agenda-Setting

It is clear that without the political will of President Kim Dae-jung, the creation of an NHRI would have not been a priority political agenda. But what went on before he made a firm decision about prioritizing an NHRI? There are several factors. For instance, Cho states that there were political considerations in play:

There was a consolidation of the two prominent candidates—Kim Dae-jung and Kim Jong-pil—from the opposition parties, and Kim Dae-jung was chosen as the sole candidate to represent both opposition parties. After this, Kim Dae-jung couldn't insist on the abolishment of the National Security Law. If he had done so, he would have not been able to win the votes that had supported Kim Jong-pil. In lieu of proposing the abolishment of the National Security Law, Kim instead proposed the establishment of the

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<sup>25</sup> Koo argues that international human rights standards were implemented and a national institution created in order to consolidate democratic institutions and prevent the "rebirth of a quasi-authoritarian regime." He states that the establishment of NHRI was explicitly linked to deterring future authoritarian regimes.

NHRCK in his campaign. In this election strategy, Chun Jong-bae's intervention and roles were instrumental.<sup>26</sup>

Chun Jung-Bae, the Vice-Chairman of the Policy Committee for Kim Dae-Jung's political party during the presidential election, was a strong proponent of an independent Korean NHRI. A former human rights lawyer, Chun was a founding member of MINBYUN—Lawyers for a Democratic Society (founded in 1988), one of the most active and influential human rights NGOs in South Korea. More importantly, he was one of the initial “translators” of the international norms on NHRIs, and he helped to introduce them to Korean society after participating in the 1993 World Conference on Human Rights as a lead South Korean NGO delegate (Chun 2000).

According to some scholars, then, President Kim's decision to create the NHRK was at least partly influenced by domestic human rights NGOs' efforts to mainstream the idea of NHRIs throughout the mid-1990s, and human rights NGOs played a pivotal role in persuading Kim Dae-jung to make his campaign pledge to create an NHRI. For instance, the National Council of Churches, which has always been vocal about social issues, including human rights, demanded the establishment of an independent NHRI as one of the criteria for presidential election (Baek 2002, 34). Domestic human rights NGOs thus played an important role both in diffusing the UN idea into Korea and in putting NHRIs on the national agenda during the 1997 presidential election campaign (Kim 2009a, 217). By late 1997, argues Kim Dong Wook, the global norms around NHRIs had largely been diffused in Korea, creating a social demand for an NHRI that was then framed as part of the political agenda during the election (Kim 2009a, 217). The political agenda-setting by the Kim Dae-jung administration and the NGOs' advocacy only

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<sup>26</sup> Cho Yong-hwan, in discussion with the author, Seoul, South Korea, October 1, 2010; copy on file with author.

accelerated the already lively “domestic policy debate on the establishment of NHRC in motion” (Kim 2009a, 217).

Burdekin concurred that the above reasons were determinant for Korea to create an NHRI. He elaborated his view on Korea in comparison to Japan:<sup>27</sup>

People compare Korea’s and Japan’s efforts in creating NHRIs: both countries started to discuss creating an institution around the same time, and both countries had conflicts between the government and NGOs. What made the difference between the two? Why was Korea able to create one, while Japan wasn’t? I think that Korea, despite its years of struggle, was able to create an independent institution because several factors came together: there was the political determination of the president, mobilized pressure from domestic NGOs, and well-coordinated advocacy from the international community. Japan did not have what Korea had. In addition, I am still skeptical about Japan’s ability to successfully establish an NHRI because of three contentious issues—namely, Burakumin (Japan’s “untouchables”), refugees, and Koreans living in Japan.<sup>28</sup>

#### 4.4 Struggle for an Independent Institution (1998–2001)

The president’s commitment to creating an NHRI was strong, but the detailed design of the NHRI did not come easily. The first problem was deciding who would take the lead on designing the institution. The Ministry of Justice (MoJ) was placed to draft the legislation for the proposed NHRI, and the draft legislation that it produced was the beginning of the long and contentious struggle between the government, the ruling party, and the NGOs for an independent

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<sup>27</sup> Japan still doesn’t have an NHRI.

<sup>28</sup> Brian Burdekin (Special Advisor on National Institutions to the UN High Commissioner for Human Rights), in discussion with the author, Geneva, Switzerland, April 6, 2011; copy on file with author.



Korean NHRI. The government had to amend the MoJ's draft bill several times (Cho 2000, 2). The strong position of the MoJ, and its ability to limit the independence of the fledgling NHRCK, triggered a great deal of opposition to its draft, and to its position in drafting the institution's design, from international human rights community, including the UN and domestic human rights NGOs.

However, all the actors involved—the president, the MoJ, the political parties, the domestic NGOs, and the international human rights community—were responsive to the rhetoric of global standards and were keenly concerned that the NHRCK be recognized as a legitimate institution by the international community. In the next section, I will first examine the resistance of the Ministry of Justice, and the oppositional drafts it produced. I will then describe how the three-year struggle was finally brought to a close by an unexpected catalyst: President Kim was awarded the Nobel Peace Prize. Finally, I will explore how Korea's long-term desired *seonjinguk* identity worked with the Kim government's strong policy preference on human rights to facilitate the creation of an independent NHRI.

#### 4.4.1 Design of the NHRCK by the Ministry of Justice

It is difficult to understand why the MoJ was assigned to deal with the creation of the NHRCK. An answer to this question, given by Kim Hyung-wan, a former staff member at NHRCK, reveals the fact that in Korea, human rights were then understood in bureaucratic terms: “it was simply because when you think of any government body to draft such a proposal, the first body that logically comes to mind is the Ministry of Justice.”<sup>29</sup> Ironically, his answer reveals that the mis-assignment took place precisely because an NHRI did not exist in Korea; before the NHRCK, there was no single credible, competent government body that could take charge of the

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<sup>29</sup> Kim Hyung-wan (former staff member at the NHRCK), in an interview with the author.

creation of an NHRI besides the Ministry of Justice—the only government body that dealt closely with human rights issues.

From the very beginning, many human rights groups were nervous about possible conflicts of interest between the MoJ's leadership role and the key concept of NHRI independence, as codified in the Paris Principles. The Paris Principles stipulate that an NHRI should be independent *de facto* and *de jure*, should be financially independent from all government branches, and should be given as broad a mandate as possible, preferably with jurisdiction to hear and consider complaints and to investigate human rights violations.<sup>30</sup> Few people expected an MoJ-designed NHRI to have credibility or legitimacy; the MoJ was a law enforcement authority that had been heavily criticized for collaborating with human rights abuses and violations under the authoritarian regime (Cho 2000, 92–116).

Amid the doubts, on September 25, 1998, the Ministry released a draft law that limited the mandate of the NHRI, consigning it to a ceremonial role and giving it only an advisory function. The MoJ proposed that the NHRCK be not a government institution but a private foundation—a special legal entity without investigative rights and without full independence. It also proposed that the MoJ itself would be the competent authority in charge of the NHRCK, and that the Minister of Justice would have the authority to recommend commissioners of the NHRI to the president for his approval. The MoJ argued that their proposed NHRI was an ideal form of an NHRI and that it followed the recommendations of the UN (Chung 2011c, 208). The Ministry intended to enact this draft law as soon as possible so that the NHRCK would be in place in time for the fiftieth anniversary of the Universal Declaration of Human Rights, to be held on December 10, 1998; they wanted the launch to be publicized as a huge achievement for Korea's

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<sup>30</sup> See Centre for Human Rights (1995).

human rights record (Amnesty International 1998c). Of course, the MoJ proposal brought massive resistance from human rights groups. From that moment, an exhausting struggle began between the Ministry and human rights communities at both the global and domestic levels, a struggle that centered on the independent status of the NHRI and that would last for more than three years.

During this struggle, the Ministry attempted to push through its version of the draft bill by trying to get the UN's endorsement rather than by persuading its own domestic constituencies. In January 1999, the Secretary of Legal Affairs to the President, a former prosecutor, Park Joo-sun, met with staff of OHCHR in New York regarding the creation of the Korean NHRI. He reported to the president that the UN experts supported the MoJ-drafted NHRCK bill. The Korean NGOs complained about this false report to the president; Park responded that his report to the president was objective, but he did not deny that he consulted the UN (Sarangbang Group 1999a).

Burdekin remembers one significant incident clearly:

I remember the national institution building process in Korea very well. It was very unusual to see a ministry, the Ministry of Justice, tirelessly trying to get the institution in the way they wanted, even if the president wanted a genuinely independent National Institution—not to mention NGOs and the UN wanting the same way. I also remember that a representative of the Korean government flew all the way to New York, met with one OHCHR officer (who did not specialize in National Institutions), and tricked her so that they could report to the president that the Ministry's proposal had the UN endorsement. It became a huge issue because it was simply not correct. I actually had to threaten a senior representative of the Korean Ministry of Foreign Affairs that unless they

corrected this information I would fly to Seoul and hold a press conference and announce that the Justice ministry was deliberately misleading the government and the public about the real position.<sup>31</sup>

As this incident demonstrates, government officials from the Ministry of Justice were more keen to obtain international recognition than to persuade or gain the consent of domestic constituencies. The Ministry officials may have thought that the issue would be more easily resolved at the domestic level after UN endorsement.

#### 4.4.2 Advocacy of International Human Rights NGOs

International human rights NGOs played a crucial role in ensuring that the Korean NHRI would meet international standards, persistently pressuring the Korean government and reminding them of international human rights norms, especially the Paris Principles. Amnesty International, a high-profile international human rights NGO, was exceptionally active in engaging with Kim's administration. Amnesty International's letters reveal that the organization had a very good understanding of Korea's desire to be the foremost *seonjin* human rights state in the region.

In February 1998, shortly after Kim's inauguration, Amnesty International issued a public statement urging President Kim Dae-jung to "ensure that Korean law and practice is in conformity with international human rights standards [to] improve human rights situations in Korea," and urged "him to ensure that the commission's statute is consistent with international standards for human rights commissions" (Amnesty International 1998a). In May 1998, Amnesty International issued another paper proposing detailed standards for the Korean NHRI

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<sup>31</sup> Brian Burdekin, in discussion with the author, Geneva, Switzerland, April 6, 2011; copy on file with author.

and making a series of recommendations to the Korean government. In the paper, it mentioned that “South Korea now has the potential to develop one of the best human rights institutions in the region,” playing on Korea’s desire to be a human rights leader in the Asia–Pacific region (Amnesty International 1998b).

After the Ministry’s draft proposal was published in September 1998, Amnesty International issued an open letter urging the president to reconsider the proposal. In letter dated October 23, 1998, Amnesty International’s Secretary-General, Pierre Sane, criticized various elements of the proposal: the limited mandate granted to the NHRI, the Ministry-led financial structure, and the proposal-drafting process’s lack of participation. He specifically stated that the proposed NHRI would not meet international norms:

The draft legislation prepared by your Ministry of Justice does not in its present form conform to international human rights standards. It would result in a commission which lacks independence and investigative powers and does not have the authority to enforce its recommendations. It will also have a very limited mandate. If the legislation is adopted in this form, there is a serious risk not only of establishing a poor human rights commission but also of undermining the credibility of your human rights reform program [ . . . ] The draft law was drawn up by the Ministry of Justice in secret, without any consultation with human rights experts in South Korea (Amnesty International 1998c).

Sane’s letter provided insight into why the government had decided to enact the problematic law on December 10, 1998, the fiftieth anniversary of the Universal Declaration of Human Rights; it stated that “we understand the symbolic importance of this date and your desire to show the South Korean people and world that South Korea has developed into a country which respects human rights,” and it encouraged the government to postpone the adoption of the

law, saying, “in this way, you will leave an important human rights legacy for all South Koreans.” Here, Amnesty International purposefully and effectively appealed to Korea’s desire to be recognized as a good human rights country by demanding that it comply with widely accepted international human rights standards. Amnesty International’s advocacy was one of the key determinants in changing the government’s plan; its efforts also created space for the activities of Korean human rights NGOs, who were diffusing the international norms of credible, independent NHRIs.

#### 4.4.3 Advocacy of Network of Transnational Actors

In the fight to ensure that the NHRCK would be in line with the Paris Principles, domestic human rights NGOs successfully collaborated with international human rights communities, including international human rights NGOs and the UN. This network of actors was critical in swaying President Kim Dae-jung to redraft the NHRI bill to guarantee the independent status of the proposed NHRCK.

On September 17, 1998, thirty Korean human rights NGOs came together, creating the Joint Committee of the Korean NGOs Coalition for Enacting the Human Rights Law and Establishing the National Human Rights Commission, a group that was designed to contest the Ministry’s attempts and proposals (Koo 2011a, 89–93). Coalition participants included a wide range of NGOs that focused on different issue areas (e.g., women’s rights, disability rights, labor rights activists, religious groups, etc.). A working group within the committee was created to draft an alternative human rights law and NHRI bill; at the same time, domestic NGOs demanded that the Ministry amend its draft law. These nonstate actors countered the Ministry’s domestic proposal by effectively appealing to global human rights norms. The NGOs coordinated with the international community, making use of the “boomerang effect” theorized

by Margaret Keck and Kathryn Sikkink in *Activists beyond Borders* (1998), putting pressure on the government from both domestic and international fronts.

The domestic NGOs also met with authoritative international figures on the issue. For instance, on October 19, 1998, the NGOs organized a meeting with Burdekin, the Special Advisor on National Institutions to the UN High Commissioner for Human Rights. The NGOs also met with Burdekin and with Mary Robinson, the UN High Commissioner for Human Rights in Geneva, in April 1999, before Robinson's visit to Korea in October of the same year (Koo 2011b, 92). The domestic NGOs asserted their views disagreeing with the draft proposal prepared by the Ministry of Justice, with some success. Burdekin was well-aware of the struggle between the Ministry and the NGOs, and made the High Commissioner fully aware of the situation in Korea before her visit there, during which she met with President Kim and expressed her support for an independent institution..

On October 29, 1998, President Kim Dae-jung met with Korean human rights NGO representatives and promised a draft of legislation that would meet the demands of the NGOs. Following the meeting, he requested that his party, the National Congress for New Politics (NCNP), draft a new NHRI bill conforming to the UN Paris Principles (Cho 2000, 99). The NCNP proposal suggested an independent national institution with a broad mandate, as per the Paris Principles; it also provided the institution with the authority to investigate human rights violations perpetrated by law enforcement agencies (*Korea Herald* 1998). The ruling party's draft accommodated the NGOs' demands, but it was not welcomed by the MoJ. On November 28, 1998, the MoJ submitted a revised version of its earlier draft with no substantial changes, and they deliberately delayed several meetings that were organized to discuss the draft bill with the ruling party and the president (Choi 2008, 76).

In the meantime, an unexpected announcement was made on March 22, 1999. The NCNP revoked its proposal for an independent NHRI and agreed to the Ministry's proposal that the NHRCK would be a private institution; this version of the MoJ's bill was submitted to the National Assembly on April 7, 1999. The bill was not adopted due to a furious outcry from the NGOs.<sup>32</sup> This incident pushed the NGOs into the streets; about thirty activists from eighteen NGOs went on a week-long hunger strike at the Myongdong Cathedral in Seoul (Kim 2010b). A group of domestic and international NGOs issued a public statement criticizing the government for its failure to follow the Paris Principles and urging the government to follow the advice of the UN High Commissioner for Human Rights:

We, the undersigned, reaffirm the importance of public consultation and transparency as emphasized by the UN High Commissioner for Human Rights; urge strongly that the government withdraw the draft human rights law and make full consultation with human rights NGOs concerned; and request the UN High Commissioner for Human Rights, *inter alia*, to provide the necessary expertise and technical assistance in order to ensure the establishment of a human rights commission in full compliance with the relevant international standards on the national human rights institutions such as the Paris Principles (Sarangbang Group 1999b).

On April 9, 1999, Amnesty International issued another open letter to President Kim Dae-jung, stressing that the proposed private NHRI would not have sufficient authority to function effectively and to be independent from the government, especially from the Ministry of Justice, and that it therefore would not be respected by the international community:

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<sup>32</sup> This sudden reversal was a surprise to everyone, considering that it came after President Kim had publicly made it clear at a press conference, held on the occasion of his first anniversary of his inauguration, on January 24, 1999, that the NHRI would be an independent institution composed of renowned and competent human rights experts.



A weak commission which lacks independence and does not have the confidence of the human rights community will be ineffective and will not command the respect of the international community. We are also concerned at reports that the new draft does not conform with international standards on the establishment of national human rights commissions. [. . .] We are concerned that provisions of this draft, and the commission's legal status as a "corporate body," will not give it sufficient independence from the Ministry of Justice. [. . .] Amnesty International believes that South Korea could establish a human rights commission which is a powerful institution for the protection and promotion of human rights and a lasting testimony of your government's commitment to human rights reform (Amnesty International 1999).

When these negotiations failed to shift the deadlock, another international voice joined the NGOs appealing to Korea's identity, interests, and desire to be *seonjingung*. The October 1999 visit of the UN High Commissioner for Human Rights, Mary Robinson, was another major determinant of President Kim's decision to reconsider the MoJ proposal. Lee Seong-hoon, the former Director-General of the Human Rights Policy Bureau of the NHRCK, says that Robinson influenced President Kim:

In the creation of an NHRI, each country goes through a different process and different variables come into play. For the Korean case, both domestic and international efforts joined forces. I think the international variables were quite critical in the creation of the NHRCK—the international opinion, especially, shifted the course of discussion over the independence of the institution. One of the critical moments was when the UN High Commissioner for Human Rights, Mary Robinson, met with the president, Kim Dae-jung, in October 1999 in Seoul. I believe the president must have been puzzled about the

struggle between his trusted staff and his long-time supporters—human rights activists.

At the meeting, the president asked Mary Robinson her views about how the Korean NHRI should be shaped. Mary Robinson answered that if the institution turned out to be a private foundation, the institution would not have legitimacy in the eyes of the international community. Mary Robinson’s timely and straightforward intervention was crucial in shifting President Kim’s mind toward creating an independent institution.<sup>33</sup>

After her visit, Mary Robinson praised Korea and President Kim for accepting international human rights norms:

Another example I would mention is South Korea. A few weeks ago, I visited South Korea, where I met President Kim Dae-jung, who has championed the cause of a national human rights institution. I stressed to the Korean officials I met, as I do to all governments, that there are certain basic requirements for national human rights institutions to be effective, notably that they must be genuinely independent and have powers consistent with a capacity to discharge their functions (Robinson 1999).

According to Koo, the joint efforts of the domestic NGOs and the international human rights community were crucial in ensuring that the NHRCK was founded as an impartial, independent institution with enforcement power: “the domestic human rights movement might not have been able to effectively pressure the government to commit to creating an independent and well-funded national institution if the movement had not been tied to the formation of the world human rights movement that was led by human rights IGOs and INGOs” (Koo 2011a, 93). The cumulative endeavors of both the domestic and the international human rights community,

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<sup>33</sup> Lee Seong-hoon (former Director-General of the Human Rights Policy Bureau of the NHRCK), in discussion with the author, September 16, 2010).

including the UN, were largely successful, appealing as they did to the country's desire to be a *seonjin* human rights state.

#### 4.4.4 Critical Catalyst to End the Struggle: Kim's Nobel Peace Prize

The government and the ruling party decided to postpone the adoption of the bill, and the negotiation over the NHRCK bill remained largely inactive until an unexpected event made the Ministry of Justice give in. On October 13, 2000, the Nobel Prize Committee announced that President Kim Dae-jung was the winner of the Nobel Peace Prize of 2000. This surprising news turned the world's attention on human rights in Korea (Robinson 2000) and on President Kim's efforts to promote democracy and human rights. In the award ceremony speech, Gunnar Berge, the Chairman of the Norwegian Nobel Prize Committee, elaborated on the committee's reasons for awarding the prize to President Kim, stressing the role he had played in advancing human rights and democracy:

Kim Dae-jung's work for human rights made him a worthy candidate [. . .] Today, Kim Dae-jung is the president of a democratic South Korea. His path to power has been long—extremely long. For decades, he fought a seemingly hopeless fight against an authoritarian regime. [. . .] In a democratic perspective, South Korea still has some way to go where reform of the legal system and of security legislation is concerned. [. . .] Our reply is that we feel confident that Kim Dae-jung will complete the process of democratisation of which he has been the foremost spokesman for almost half a century (Berge 2000).

Kim calls this announcement a “breakthrough” in negotiations (Kim 2009a, 228), and he quotes *Hankyoreh* as saying that the ruling party's attitude changed because they realized that “it would not look good [at home and abroad] if the Korean government were to enact no other law

than the Human Rights Law in a way opposed by human rights NGOs” (Kim 2009a, 228). Media also started to pay attention, wondering whether President Kim’s Nobel Peace Prize would change the positions of the politicians and the Ministry of Justice with Korea’s international reputation at stake (Hankyoreh 2000a, 2000b). Cho Yong-whan, one of the key drafters of the NGO-initiated NHRCK bill and the key negotiator with the Ministry of Justice, concurs with Kim that the announcement of the Nobel Prize Committee was the beginning of the end of the three-year struggle with the Ministry. Cho explains the background to the Ministry’s change in position and the environment in which the struggle took place:

The course of discussion was changing and the Ministry was almost isolated, insisting on its position alone. Amid the negotiation, the announcement of the Nobel Prize Committee came along, and I think it was an instrumental catalyst that finally ended the long back-and-forth negotiation process over the status of the NHRCK. The Ministry finally gave in. It was because the Ministry could not afford to let the world to see Korea as a country where a Ministry was fighting against domestic and international human rights communities; the world was focusing on Korea and its human rights advancement due to the Nobel Peace Prize. It was a reasonable decision on the Ministry’s part.

It was quite rare, the amount of international attention the NHRCK received in the establishment process. I believe international human rights communities, especially Amnesty International and the UN OHCHR, saw Korea as a good human rights model that had achieved democratization in a rapid period, and thought that it could serve as an example for other Asian countries. President Kim’s international fame also attracted the attention of international communities to Korea’s human rights situation and the NHRCK building process. The international community’s persuasion was critical in creating the

NHRCK as an independent institution. Of course, there was persistent and strong mobilized advocacy from the domestic NGOs, who tirelessly informed international actors of the situation.

This rare deadlocked struggle between the Ministry and civil society, which lasted over three years, may be seen as a traditional conflict between the state and society, but I think it was more of a disagreement between the traditional state bureaucracy and newly emerged civil society. I had several extensive and heated discussions with the Ministry over the draft bill. I experienced a lot of frustrations, and I was somewhat surprised at its unyielding position no matter what until the announcement of the Nobel Prize Committee. But I do not think the Ministry had any malicious intentions. I think it was merely a result of a conventional bureaucratic approach to human rights (Cho 2000).

Lee Seong-hoon, the executive director of the Korean Human Rights Foundation and the former Human Rights Policy Director at the NHRCK, elaborates further on the events of that period:

The course of negotiation was already going against the Ministry of Justice, which was almost alone in its insistence on a private institution, but I agree that the Nobel Peace Prize announcement was a catalyst in changing the position of the Ministry. The global level of attention on the Korean human rights situation incurred by the announcement pressured the Ministry to change its position. It was Korea's first chance to shine as a democratic human rights state, to show a different image to the world than the previous image of Korea as an authoritarian human rights abuser. Korea had too much to lose in

terms of international reputation and its pathway to becoming an advanced democratic country for the Ministry not to change its position.<sup>34</sup>

After President Kim received the Nobel Peace Prize in October of 2000, efforts to push the NHRCK bill through accelerated. It was decided that a government-drafted bill from the National Assembly would best minimize the influence of the Ministry of Justice in the establishment of the NHRCK (Kim 2009a, 228–229). The NCNP ruling party began debating the bill on February 27, 2001, at least partly in response to appeals that equated establishing an independent and effective NHRC with Korea's desired *seonjingung* status. During the debate over the adoption of the bill, the main drafter of the act, Congresswoman Lee Mi-kyung, explained the justifications for this version of the draft proposal while stressing that efforts to continue advancing human rights should continue:

With the trend of internalizing human rights enforcement within countries, the international community is paying more and more attention to each country's human rights situation; however, South Korea has not yet escaped from its negative human rights image from previous human rights violations under the authoritarian regimes of the past. Therefore, it is our historical mandate to build and realize a *seonjin* democratic society where human dignity, rules, and human rights are respected without discrimination and without human rights violations (Lee 2001, 21).

This amended bill, which was largely in compliance with the Paris Principles and institutionalized the NHRCK as an independent governmental body with a broad mandate, was

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<sup>34</sup> Lee Seong-hoon (executive director of the Korean Human Rights Foundation and the former Human Rights Policy Director at the NHRCK), in discussion with the author, September 16, 2010.

formally adopted and became effective as of May 24, 2001. This bill provided the legal grounds for the creation of the NHRCK.

#### 4.5 Launch of the NHRCK in 2001 and Its Limitations

The National Human Rights Commission of Korea was finally launched on November 25, 2001; its first chairperson, Kim Chang-guk, and other commissioners had been appointed earlier in October. The NHRC Act incorporated many of the demands of the NGOs and the international community, generally complying with the Paris Principles and making the NHRC an independent governmental body:

On August 1, 2001, it was informally decided to appoint Kim Chang-guk, an accomplished lawyer, to be the First President of the Commission, and the “Preparation & Planning Team for Establishment of National Human Rights Commission (hereinafter ‘Planning Team’)” was organized under the Prime Minister's Directive No. 420 on August 20, only three months ahead of November 25, the date given for the official launch of the Commission. The Planning Team set out to gather information and prepare draft bills in order to comply with the Enforcement Decree and the Rules for the Commission Act, and began to outline the necessary logistical procedures and proposed organization of the Secretariat. However, progress was not made as planned because of the delay in appointment of Human Rights Commissioners for Human Rights and other difficulties. It was October 9, only 40 days ahead of the launch, when the President officially appointed 11 persons to the Human Rights Commission including 4 Commissioners selected by the National Assembly, 3 Commissioners nominated by

Chief Justice of the Supreme Court, and 4 Commissioners nominated by President himself (NHRCK 2002a, 8).

The mandate of the Commission was broad enough to protect the fundamental human rights of all individuals, including non-Koreans residing in Korea (Articles 1 and 4), and guaranteed the NHRCK's independence (Article 2). It also imposed pluralism, one of the key components of the Paris Principles, on the composition of the Commission: four or more of the commissioners must be women, and commissioners could be either selected by the National Assembly or nominated by the President of the Republic of Korea or by the Chief Justice of the Supreme Court (Article 5). The Act provided the Commission the power to make recommendations to improve or rectify policies and practices (Article 25) and to present opinions to courts and Constitutional courts (Article 28). Articles 24 and 31 provided the Commission with authority to visit and inspect government facilities to protect the rights of people in those facilities.

The detailed mandates and functions of the NHRCK are as follows:

- Developing human rights policies through conducting human rights research and issuing policy recommendations
- Investigating discrimination and human rights violation cases and providing access to remedies
- Promoting human rights education and raising public awareness of human rights
- Promoting and monitoring the national implementation of international human rights treaties



- Cooperating with government agencies, civil society organizations, UN human rights bodies, and national human rights institutions (Asia–Pacific Forum [APF], International Criminal Court [ICC])
- Other matters deemed necessary to protect and promote human rights (NHRCK, n.d.).

Although the NHRCK was granted the status of an independent national institution, not a subsidiary body of the MoJ—the most fundamental defining element of a strong NHRI—the NHRCK nevertheless launched with many structural and operational weaknesses. For example, many key issues, such as staffing and the institution’s legal status, were not laid out in the NHRCK’s constitution (which would guarantee the institution’s independent control over these matters) but premised on the NHRCK law. As Kim Hyung-wan has said, having won the battle for the NHRCK’s independent status, there was very little room for further negotiation about the organization’s size, structure, working mechanisms, etc. The NHRCK had to accept limitations on even key issues (Kim 2010b).

The NHRCK’s first annual report calls the organization’s establishment a “half victory” and describes several unsatisfactory elements in the Act: “the privilege of exemption from liability for defamation under civil law or criminal law is not given to the Commission or the Commissioners; the procedure of a hearing and consent from the National Assembly is not provided adequately for appointment of Commissioners for Human Rights; independence in personnel management and budget is not sufficiently provided for; the governmental organs and agencies over which the Commission has jurisdiction for investigation are limited; the Commission has no power to order a person to come along for investigation; and an interrogation system for witnesses is not available” (NHRCK 2002a, 7). The NHRCK assessed the importance of its own creation in this way:

First, the creation of the Commission means [the] domestic materialization of an international institution for human rights, i.e., the domestic launch of a “quasi-international institution” in connection with human rights [. . .] Second, it is significant in that a national institution, independent from legislative, administrative and judiciary bodies of the government, has been created so that it can check and monitor the existing powerful government agencies [. . .] Third, the Commission performs its role as the “watch-guard for human rights” that can illuminate the “dead zone of human rights” and take preventative measures against human rights violations. [. . .] Fourth, The Commission carries out its function as an advocate for human rights (NHRCK 2002a, 10–11).

The organization thus connected one of its key functions—to “improve laws and systems and also to raise ordinary citizens’ sensitivity of human rights in order for us to develop to the level of other advanced countries in human rights”—to its intention to match other *seonjin* human rights states’ level of human rights understanding (NHRCK 2002a, 11).

Although in the beginning the Commission was still figuring out its institutional structure and priorities, it executed many of its functions in the year 2002, it presented opinions on fifteen cases of statutes and systems, including presenting a dissenting voice on a draft of the “Anti-Terrorism Act”; made six recommendations for improvement in governmental policies; and produced four recommendations to the Ministry of Foreign Affairs, urging the government to establish plans for domestic implementation of the state obligations to implement international human rights laws and norms (NHRCK 2002a, 24–27). In addition, the Commission processed 1,360 cases out of 2,833 complaints of alleged human rights violations, registered from

November 2001 to December 2002, while working toward resolving the remaining 1,473 cases (NHRCK 2002a, 60).

However, the NHRCK's position as an independent institution that did not belong to any government body was yet not understood; it was constantly challenged, and the government had not taken a firm stance on the NHRCK's independent status. An exemplary case that illustrates the conflict between the government and the NHRCK about the Commission's independence is found in Chung (2011c). In November 2002, the chairperson, Kim Chang-guk, traveled to the APF annual meeting, held in New Delhi, for six days. He did not seek prior approval for this travel, as the rules for minister-level government officials do not require it. However, on November 11, 2002, the president's office gave a stark warning to the NHRCK: it claimed that, because the NHRCK chairperson is at the level of a minister, the NHRCK chairperson should have submitted a request for travel approval through the Minister of Foreign Affairs to the Prime Minister for the president's final approval. The Commission responded to the warning with a press release stating that the travel rules are for officials belonging to the administrative branch of the government, and that the chairperson of the NHRCK, an independent institution, should not be bound by such rules (NHRCK 2002b). Chung, who reports this incident, stresses that a governmental institution had never before in Korean history outright challenged the president's authority in a public statement (Chung 2011c, 207–209).

As Lee Seong-hoon explains, the political environment under Kim's government was not conducive to the NHRCK's positioning itself firmly as an independent human rights body for several reasons:

There are many reasons why the NHRCK was not able to establish its authority during Kim Dae-jung's time. First, Kim Dae-jung's administration inherited the traditional

invested bureaucrats from previous regimes, so Kim had relatively weak authority, not having full control over the bureaucrats. Second of all, the NGOs advanced a lot during this time, but they were still not fully effectively mobilized. Lastly, Kim, as a politician, was probably not able to completely disregard the Ministry of Justice, which is one of the most powerful ministries. But things changed, and the NHRCK changed drastically as the next president, Roh Moo-hyun, came on board.<sup>35</sup>

#### 4.6 Conclusion

In this chapter, I traced the process of diffusion of global human rights norms into the Korean domestic arena in order to show how Korea used human rights as an international legitimacy-seeking strategy from the early 1990s to the establishment of the NHRCK in 2001. The norms-diffusion process was possible because Korea's national identity, and the national identity of the Korean people, was undergoing a reshaping process: Korea was changing from a developing country with a poor human rights record to a respected member of the human-rights-respecting "good nations club"—an exclusive club that can only be entered by doing what other *seonjin* countries do.

The NHRCK was established due to synergic effects that were generated by domestic and international advocacy groups, who used rhetoric based on Korea's desire to be a good country. The road that would lead to the establishment of the NHRCK began when NHRIs rose to prominence in the 1990s as indicators of human rights states; the international legitimacy attached to NHRIs provided support to the efforts of Korean domestic groups and politicians to establish their own NHRI. This support was both indirect and (at times) direct, as key

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<sup>35</sup> Lee Seong-hoon, in discussion with the author, September 16, 2010.

international human rights figures such as Amnesty International, the UN High Commissioner for Human Rights, and the network of international human rights groups stepped in to advocate for the creation of an NHRI in Korea. At the domestic level, one significant factor in the founding of the NHRCK was the political will of President Kim, who was determined to establish an institution that would be internationally recognized as a properly functioning NHRI; another was the years of assiduous resistance and advocacy that had come from Korean human rights groups. Yet even after its founding, the NHRCK was not yet firmly rooted in Korea as an independent human rights agency; its authority was still being challenged.

## CHAPTER 5

### CONSOLIDATION OF THE NHRCK (2003–2007)

*The Republic of Korea will make a new beginning as a model human rights country, and we will absolutely become a human rights seonjin country [ . . . ] It is meaningful in many aspects for Korea to host this Conference. I would like to think of this as an indication that the international community is recognizing Korea as a country of human rights and democracy.*

—President Roh Moo-Hyun’s opening remarks at the  
7<sup>th</sup> International Conference of National Human Rights Institutions  
September 14, 2004, Seoul (Presidential Secretariat 2005, 319)

#### 5.1 Introduction

As the previous chapter described, the long process of establishing the NHRCK took place during Kim’s government, and the NHRCK became operational toward the end of his term. In February 2003, Roh Moo-hyun was inaugurated; his policies in large measure worked toward Korea’s becoming a human rights-respecting *seonjin* nation, and under his administration, the NHRCK developed into a credible institution with a solid standing.

Under Roh, the process of changing Korea’s image from that of an undemocratic developing country to that of an advanced democratic country accelerated, in part through economic growth (Korea became one of the largest economies in the world), and in part through Roh’s attempt to obtain moral legitimacy at the regional and international levels by proactively internalizing globally accepted human rights norms. During this period, numerous policies and

orientations aimed to show the world that Korea was a human rights country and one of the “good” rich, developed countries were put in place.

During this time, the NHRCK experienced rapid development, and the Roh Moo-hyun government’s support for the NHRCK’s independence was reflected its commitment to abide by the Paris Principles. At the domestic level, the NHRCK spoke up on many critical (and political) human rights issues, meeting the expectations for a solid, independent human rights institution (Chung 2011c, 209). The NHRCK risked political pushback by directly opposing some government policies, such as the deployment of troops to Iraq. Taking these contentious stands firmly established the NHRCK’s independence from the government, increasing its credibility.

At the regional and international levels, the NHRCK became a model NHRI in a short period of time, and an increasing number of governments, especially Asian countries, recognized the NHRCK’s model status. At the international level, Korea hosted the 7th International Conference of the National Institutions in September 2004; this landmark international conference focused the world’s attention on South Korea’s human rights records and achievements and on the young NHRCK. A number of prominent political figures participated in the meeting, including President Roh and Louise Arbour, the UN High Commissioner for Human Rights. At a later stage, the NHRCK took up important positions at the regional and international levels as a leading human rights country. For instance, the chairperson of the NHRCK served as the chairpersonship of the Asia–Pacific Forum (APF) in 2006, only four years after Korea became a full member of the APF. The NHRCK chairperson was also elected vice-chair of the UN’s International Coordinating Committee of NHRIs in 2007 in recognition of the NHRCK’s status as a credible and legitimate institution.

In this chapter, I argue that Korea's promotion of the NHRCK, an act that seemingly restrained the state's own power, actually enabled Korea to *strengthen* its soft power in the international sphere by reinventing itself as a *seonjin* human rights state. The results of the Korean government's efforts to be a good *seonjingu*k and to gain the respect of the international community resulted in tangible outcomes. For example, under Roh's administration, several Koreans took up high-level positions at the UN, including the position of the UN Secretary-General and the UN Deputy High Commissioner for Human Rights, and in 2006, Korea was elected as one of the inaugural members of the UN Human Rights Council; these diplomatic achievements would have not been possible if Korea had not had a reputation as a good human rights *seonjin* country, and they are evidence that the government's attempts to become *seonjingu*k were successful.

This chapter will demonstrate how the NHRCK was consolidated under Roh's regime (between 2003 and 2007), and it will investigate how Korea actively sought international legitimacy by embracing global human rights norms and promoting the NHRCK. In other words, Korea's desired identity, that of a *seonjin* state, was expressed in its behavior, which supported international human rights norms and standards. This chapter also demonstrates how the country-specific context—the inauguration of Roh's human rights-friendly government—helped consolidate the NHRCK. In other words, the NHRCK might have not prospered as it did if its development had taken place under a different regime with different policy goals.

## 5.2 Inauguration of the New Human Rights-Friendly Administration of Roh Moo-hyun

In December 2002, Roh Moo-hyun was elected the sixteenth president of Korea. The election of Roh, a former human rights lawyer who had defended human rights and labor rights



under dictatorships for decades, was regarded as signaling the arrival of a new generation of democracy, in part because Roh was largely backed by young voters and by the so-called 386 Generation.<sup>36</sup> With the inauguration of Roh Moo-hyun, Korea entered into “a new era in Korean democracy ending the post-three Kim politics, i.e., one-man rule based upon regional factions. It also overcame authoritarian practices and introduced new democratic procedures” (Kim 2014, 161). With Roh’s success, it seemed that there was no going back—that Korean democracy would continue to flourish without halt or fail. Although Roh’s political roots were not as solid as those of career politicians, during his administration, Korea became the eleventh largest economy in the world and achieved a GDP of \$20,000 USD per capita for the first time in Korean history.

Under Roh’s regime, the NHRCK enjoyed a vast amount of autonomy and the developmental state mentality also intensified. The country’s policies were geared toward becoming a better developmental country, a status that is respected by its Asian peers and by other developed countries.

#### 5.2.1 Desire to Be *Seonjungkuk* and the Use of Human Rights

#### 5.2.2 Becoming *Seonjungkuk* under Roh

An analysis of statements made by President Roh during his five-year term reveals the deeply rooted desire that Korea be a *seonjin* state, and shows how deeply embedded the notion of human rights was in the Korean concept of *seonjungkuk*. Roh’s statements in all areas of public policy—economy, trade, military, social welfare, education, technology, education, and human rights—are grounded in the concept of *seonjin*. For example, a government publication notes that

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<sup>36</sup> 386 Generation is the generation of people, then in their thirties, who were born in the 1960s and who had gone to university in the 1980s.

Korea fulfills all the criteria required to be a *seonjin* state except that of the annual per capita GDP reaching \$20,000 USD;<sup>37</sup> it also notes some other specific requirements that Korea must meet to be classified as *seonjinguk*, such as the ratio of expenditure on social welfare to GDP, the maturity of social capital, and the effective use of women in the labor force. The report argues that Korea is one step away from being *seonjinguk*, and that in order to achieve its goal, it needs to implement new strategies for development (Presidential Secretariat 2007, 2–6).

Analysis of Roh’s statements shows that he regularly used the rationale that Korea should do what other developed states do to become one of those developed states; this analysis thus offers empirical evidence that Korea subscribed to the logic of appropriateness. Roh saw that Korea was at a critical juncture in its shift from developing country to developed country, and he persistently stressed the need for Korea to leap forward and become a *seonjin* state. Roh used this strong drive to become *seonjin* to persuade the society to close the gaps that remained between Korea and developed countries and to leave developing countries behind. For Roh, the *seonjin* state appears to be primarily defined by the size of the economy (\$20,000 USD GDP), with a strong emphasis on comparative rankings (the world’s first, second, third largest economies, etc.), but the concept of *seonjin* was broad enough to encompass all areas of society, including its human rights policies. For example, a statement made by Roh at a high-level meeting at the 60th session of the UN General Assembly recognizes Korea’s “responsibility and role” to resolve various global issues, including advancement of human rights, and he positions Korea as a model nation: it has realized the values of the UN and has built the 11<sup>th</sup> largest economy in the world and a remarkable democracy out of a war-torn country (Presidential

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<sup>37</sup> The Korean government elaborates the four general criteria for *seonjinguk*: (1) IMF classification, (2) OECD membership, (3) above \$20,000 USD GDP per capita, and (4) above 0.9 score in Human Development Index. The report stated that Korea’s per capita GDP was expected to exceed \$20,000 USD in 2007 (Presidential Secretariat 2007, 2–3).

Secretariat 2006, 381). This statement puts Korea on par with other large, rich democratic *seonjin* states that lead on global issues.

### 5.3 Human Rights Embedded in Becoming *Seonjingu*

The Roh regime's desire to join the *seonjingu* club is clearly visible in its emphasis on human rights, which became a priority policy issue during Roh's time. The following statements from President Roh stress the advancement Korea has made in transitioning from a dictatorship to a human-rights-respecting democratic state, and emphasize Korea's current efforts to become a human rights *seonjin* state. The statements also show how deeply human rights were embedded in the country's developmental agenda and in its attempts to become *seonjingu*.

Korea has become the world's twelfth most prosperous country, overcoming the aftermath of the war. Freedom, human rights and democracy are bursting into full blossom after defeating the long oppression of dictatorship (Presidential Secretariat 2004, 37).

I fully support the vision and activities pursued by the UN. I will proactively participate in international cooperative efforts aimed at advancing democracy and human rights, and in all efforts to resolve global problems, including terrorism and poverty (Presidential Secretariat 2004, 117).

We cannot delay the adoption of an Employment Permit System for foreign labor any longer [. . .] If we were to drive those who came to Korea with a Korean dream into becoming criminals, we could not be regarded in the world's eyes as a legitimate human rights state (Presidential Secretariat 2004, 284).

Our troops are growing as a *seonjin* military who are defending freedom and human rights, as we have deployed peacekeeping forces all over the world, including Iraq, Afghanistan, and East Timor (Presidential Secretariat 2004, 403–404).

The results of [the democratization movements] led to the expansion of freedom, human rights, and democracy for the common people and normal citizens, not for those in power and the privileged. [. . .] Let's move forward without vacillation to become [. . .] the world's first-class country where all Koreans enjoy prosperity with a GDP of \$20,000 USD (Presidential Secretariat 2004, 608–609).

We need a collaborative effort to safeguard world's peace, security and human rights. We need to live up to our responsibility as a legitimate actor in the international community (Presidential Secretariat 2004, 614).

The Roh regime's focus on human rights (including the promotion of the NHRCK) as a means of pursuing international legitimacy is particularly well evidenced in Roh's remarks at the 7th International Conference for National Human Rights Institutions, which was hosted by the NHRCK in September of 2004. Roh states that the creation of the NHRCK was a turning point in Korean human rights history, marking the moment that Korea began to deal with human rights issues that had accumulated over the past decades. He affirms that he will lead Korea to be a "human rights *seonjin* state" and that it will become a "model human rights state" by resolving its past human rights violations. He further asserts that the NHRCK's hosting of the conference means that "the international community is regarding Korea as a country of human rights and democracy" (Presidential Secretariat 2005, 320–321). Participants in the conference include the UN High Commissioner, Louise Arbour; the chairperson of the International Coordinating

Committee of National Institutions for the Promotion and Protection of Human Rights, Morten Kjaerum; the UN Special Rapporteur on human rights defenders, Hina Jilani; and many global human rights figures, including representatives of more than seventy NHRIs and of a number of global and local NGOs.

Over time, Roh's regime showed increasing confidence in Korea's status as a democratic human rights state. His statements, examined chronologically from 2003 to the end of his term, increasingly reiterate that the world is recognizing Korea as a democratic *seonjin* human rights state:

It is different now. Korea has sufficient ability to keep our safety and pride. We have a strong military no country can overlook, and it is supported by the world's twelfth largest economic power. We are recognized as a legitimate democratic human rights state (Presidential Secretariat 2008, 112).

We have grown to have enough capacity to protect ourselves. We have become recognized by the world as a democratic human rights state, in which revival of dictatorship is unimaginable (Presidential Secretariat 2008, 340).

We are recognized as a democratic human rights state by the world. We still have a long way to go, but at least all of those shameful phases such as dictatorship [and] torture [. . .] are all in the past (Presidential Secretariat 2008, 390).

We have made a great advancement in democracy. Freedom House, a global human rights organization, rated Korea's political freedom as [being on] the level of [the] world's best. Korea received a better rating than the US and Japan in press freedom, according to Reporters without Borders. The democracy and economic development we

have accomplished is an achievement that is rarely found in world history. No country has entered into becom[ing] a *seonjin* state like we did, [although] [. . .] around 100 countries became independent after World War II (Presidential Secretariat 2008, 451).

Your home, Korea, has now become a country you can feel proud of everywhere. We have the twelfth largest economy in the world; [we] have power to defend ourselves; and we are recognized as a democratic human rights state by the world. The [country's] reputation in the international community is high enough to elect a Korean UN Secretary-General (Presidential Secretariat 2008, 497).

The apparent boost in confidence may be, in part, because Roh was nearing the end of his term, and he may have felt the need to show off the achievements of his regime. Or, as some scholars argue, it may be because he realized the legitimizing possibilities of Korea's taking on a leadership role in promoting and protecting human rights. According to Soh Changrok, Korea was able to take up a leadership role in promoting human rights governance in Asia because of its economic development and democratization; its status as one of the largest economies in Asia made it a model country from which other Asian countries could learn (Soh 2013, 13). Considering the timing of these statements, Roh's increasing confidence may also have been related to the appointment of Ban Ki-moon as the UN Secretary-General. Perhaps the appointment of a Korean national to the top UN position conferred enough legitimacy for Roh to feel that Korea had almost achieved *seonjinguks* status.

#### 5.3.1 Do What Other *Seonjin* Human Rights States Do

Korea's attempts to become a *seonjin* human rights state by doing what other *seonjin* states do is demonstrated through a newspaper campaign entitled "The Way to *Seonjin* Human

Rights State,” co-hosted by the NHRCK and the *Seoul Newspaper* between July 18, 2005, and September 20, 2005. The purpose of the campaign was to “explore ways for Korea to join the ranks of the *seonjin* human rights states by exploring other *seonjin* human rights states’ advanced experiences and policies” (*Seoul Newspaper* 2005). The campaign introduced specific areas of human rights issues (disability rights, women’s rights, the rights of conscientious objectors to military service, migrant rights, elder rights, and prisoners’ rights) in eight select advanced countries: the United States, the United Kingdom, New Zealand, the Netherlands, Germany, France, Japan, and Taiwan. This campaign exemplifies the way that human rights norms came to be incorporated into *seonjingu* discourse. It reflects Koreans’ idea that to become *seonjingu*, one must follow the human rights policies of other *seonjingu*.

#### 5.4 Consolidation of the NHRCK (2003–2007)

##### 5.4.1 Achievements of the NHRCK at the Domestic Level

The NHRCK launched in November 2011 and immediately consolidated its presence and accelerated its activities. It expanded and grew into an independent institution with a clear direction and voice, actively speaking up on various human rights issues in Korea, making recommendations to various government bodies, and handling an enormous number of cases of human rights violations. It also actively engaged in international cooperation, taking up a leadership role in both international and regional bodies (e.g., ICC and APF) and assisting in the establishment of NHRIs in other countries. Through these efforts, the NHRCK became a credible and legitimate institution at both the domestic and international levels.

This was largely made possible because the government let the NHRCK perform its functions without intervening, despite the fact that, in a few notable, highly political cases, the

NHRCK directly opposed the views of the government and the president. The government responded by saying that it is the NHRCK's duty to express its view on any matter, even if it means challenging the president.

In this section, I show how the NHRCK became established as a credible institution in Korean society between 2003 and 2007 by describing its achievements during this period. The NHRCK had the strong support of the government during this time; there was a general culture of accepting the NHRCK's recommendations—a culture that cannot be forced and must rely on the good will of the recipients of those recommendations. This culture is demonstrated by the high acceptance rate of NHRCK recommendations presented to various government bodies, including relevant ministries, competent courts, and legislative bodies.<sup>38</sup> As Figure 4 shows, the number of recommendations made by the NHRCK<sup>39</sup> steadily increased between 2001 and 2008, going from 6 in 2001 to 25 in 2002, and increasing from 31 in 2005 to over 51 in 2006; the number remained above 50 until 2008.

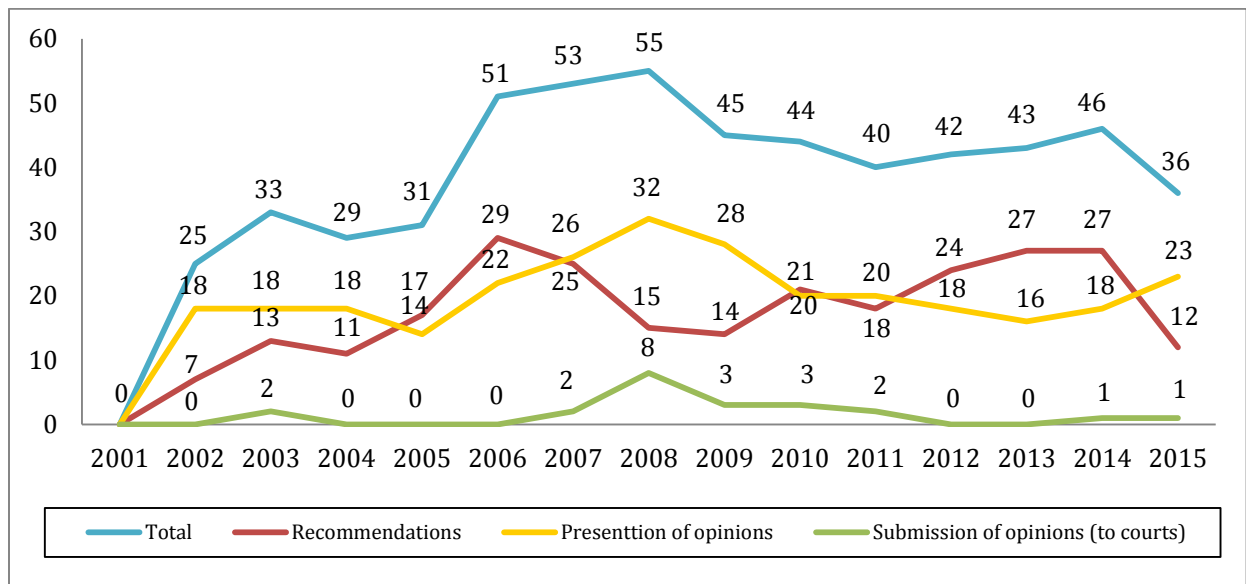
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<sup>38</sup> Sub-paragraphs 1, 4 and 7 of Article 19 of the National Human Rights Commission Act (NHRC Act) mandates that the Commission 1) conduct research on statutes, legal systems, policies, and practices related to human rights, and make recommendations and opinions on them to improve human rights; 2) conduct surveys on human rights conditions; and 3) research and make recommendations and opinions about the feasibilities of acceding to and observing international human rights treaties.

<sup>39</sup> The total number includes recommendations, expressions of opinion, and presentations of opinion.



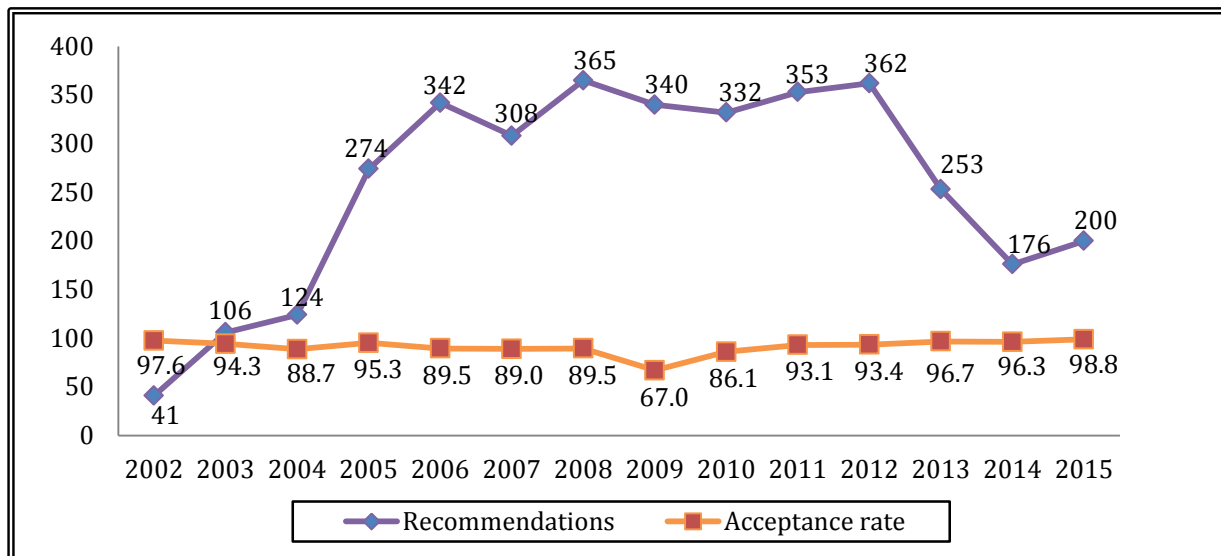
Figure 4 Trends in human rights policy recommendations



Source: Human Rights Statistics 2015, National Human Rights Commission of the Republic of Korea, p. 2.

Not only did the number of human rights policy recommendations increase between 2001 and 2008, but the acceptance rate of the recommendations remained high despite the rise in the number of recommendations (see Figure 5). The cumulative acceptance rate for NHRCK recommendations between 2001 and 2008 was 89.1% (Kim 2009b). This indicates that government bodies had a culture of taking NHRCK recommendations seriously.

Figure 5 Number of recommendations and acceptance rates



Source: Human Rights Statistics 2015, National Human Rights Commission of the Republic of Korea, p. 2.

The issues covered by the NHRCK recommendations were often highly political and sensitive; in 2003, NHRCK recommendations covered the NEIS (National Education Information System), the war in Iraq, migrant workers, the Hoju (Family Registry) System, and a bill on the amendment to the Terror Prevention Act, all of which were highly sensitive political issues at the time (NHRCK 2003, 14). In 2004, NHRCK issued twenty-seven recommendations or opinions on statutes, legal systems, and policies relating to human rights. Out of those twenty-seven recommendations, only six were not accepted (NHRCK 2004, 21). In 2005, eight cases were accepted fully or partially; only one case was rejected out of the total twenty-two cases (NHRCK 2005, 25–26). See Table 2.

As the NHRCK's case-handling capacity has increased, the number of complaints has also increased. Between 2001 and 2007, the NHRCK handled 38,531 counseling cases, with the

number increasing each year, from 7,738 in 2005 to 8,311 in 2006 and 10,693 in 2007 (NHRCK 2007a, 46). Between 2001 and 2007, the NHRCK accepted a total of 28,854 complaints (NHRCK 2007a, 46). In 2006, NHRCK processed a total of 34,382, cases including 4,187 complaint cases, 10,737 counseling cases, and 19,558 general cases. The NHRCK's case-handling capacity drastically improved over the years; the 2006 total is an increase of 1,045 cases over 2005 and an increase of 10,000 cases over 2004 (NHRCK 2006, 43–44). NHRCK states that the increased number of complaints that it received implies “that the public is increasingly interested in human rights and has rising expectations of the Commission” (NHRCK 2003, 13).

Table 2. *Number and Acceptance Rate of NHRCK Recommendations 2003–2007*

	2003	2004	2005	2006	2007
Accepted and partially accepted	14	6	8	5	10
Not accepted	5	6	1	1	1
Under review	4	15	13	11	2
Total	23	27	22	17	13
Acceptance rate	62%	22%	36%	29%	77%

*Source:* Annual Reports of the NHRCK from 2003 to 2007.

The NHRCK also actively engaged in implementing international human rights treaties and standards in Korea; it made recommendations to the government to improve laws, policies, and practices to ensure compliance with international human rights standards, including urging

the government to implement recommendations from international human rights bodies. For example, the NHRCK recommended to the Prime Minister, the Ministry of Foreign Affairs, and the Ministry of Justice the full implementation of the International Covenant on Civil and Political Rights and the International Convention of Racial Discrimination and the Convention Against Torture (NHRCK 2003, 40). Furthermore, the NHRCK reviewed state reports on international human rights treaties “to seek ways to improve domestic laws and current systems related to the international treaties and covenants and to check whether the government is practically fulfilling its duties under the treaties beyond superficial application of the law and establishment of institutions” (NHRCK 2003, 39–40). For example, the Commission accessed the Korean government’s report to the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, and opined that the government report did not sufficiently resolve some reported issues and omitted reporting on others. The recipient entity, the Ministry of Justice, partially accepted the opinions of the NHRCK, saying that it planned to submit a revised report to the committee (NHRCK 2004, 43). As Table 3 shows, the NHRCK has made comments on state reports to the monitoring bodies on almost all treaties ratified by the Korean government.

Table 3. *Number of NHRCK Opinions about State Reports to International Human Rights Bodies*

	2	2	2	2	2	2	2	2	2	2	2	2	2	2
	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	1	1	1	1	1	1	0	0	0	0	0	0	0	0
	5	4	3	2	1	0	9	8	7	6	5	4	3	2

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Human Rights Council	1	—	—	—	1	—	—	—	—	—	—	—	—	—	—
International Covenant on Civil and Political Rights	2	—	—	—	—	1	—	—	—	—	—	—	1	—	—
International Covenant on Economic, Social and Cultural Rights	2	1	—	—	—	—	—	—	—	—	1	—	—	—	—
International Convention on the Elimination of All Forms of Racial Discrimination	3	—	—	—	—	1	—	—	—	—	1	—	—	—	1
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	3	—	—	—	1	—	—	—	—	—	—	—	—	1	1
Convention on the Elimination of All Forms of Discrimination against Women	4	1	—	—	—	—	—	1	—	—	—	1	—	1	—
Convention on the Rights of the Child	2	—	—	—	—	—	—	—	1	—	1	—	—	—	—
International Convention for the Protection of All Persons from Enforced Disappearance	0	—	—	—	—	—	—	—	—	—	—	—	—	—	—
International Convention on the Rights of Persons with Disabilities	1	—	—	—	—	—	1	—	—	—	—	—	—	—	—

Total	18	2	—	—	2	2	1	1	1	—	3	1	1	2	2
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*Source:* NHRCK (2015, 4).

The NHRCK’s treaty advice (advising the government to ratify or withdraw reservations from international human rights treaties) has also been largely accepted. The purpose of the NHRCK’s treaty advice was to “improve domestic laws and legal systems relating to human rights, [and] ultimately to bring Korea up to par with international standards” (NHRCK 2004, 43). Although the NHRCK’s advice and recommendations may not have always determined the government’s compliance with international treaties, certainly NHRCK’s recommendations at least influenced the government’s decisions. For example, the government acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women<sup>40</sup> on October 18, 2006, following an NHRCK recommendation made in 2003 (NHRCK 2003, 39–40); the government acceded to two Optional Protocols<sup>41</sup> of the Convention on the Rights of the Child (CRC) on September 24, 2004, following an NHRCK recommendation made on December 8, 2003; and the government signed and ratified the Convention on the Rights of Persons with Disabilities on March 30, 2007, and on December 11, 2008, respectively, after NHRCK recommended ratification in 2007 (NHRCK 2007b).

The NHRCK accomplished all these achievements despite challenges such as staffing (many staff working at the Commission were bureaucrats with no background in human rights) and internal politics (there seemed to be more internal struggle between commissioners and the

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<sup>40</sup> Accessing to the Optional Protocol means that individuals can file a complaint related to the CEDAW directly to the committee monitoring the implementation of CEDAW.

<sup>41</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

Secretariat than between the NHRCK and the government bodies; Choi 2010). The Commission also continued to disagree with some human rights NGOs, with gaps created during the NHRCK establishment process going unresolved. The biggest challenge to the NHRCK, which persists into the present day, is its weak institutional standing. The original proposal to establish the Commission as a constitutional body was not accepted, and the Commission's functions and status are therefore based on a single document, the NHRCK Act. As the Commission's status was not firmly rooted in law, its consolidation, development, and success depend on the government, and often on the political will of the president.

#### 5.4.1.1 Consolidation through Challenging the Government: Deployment to Iraq

The NHRCK consolidated its status through a few defining moments of challenge in which it publicly criticized the government on highly political issues.<sup>42</sup> The NHRCK's opposition to the president's decision to deploy military aid to Iraq, which was one of the most critical diplomatic issues for Korea that year,<sup>43</sup> is one of the most defining moments for the Commission, and it is worth treating the incident in detail, both because the case made the general public aware of the role of the NHRCK and because the incident initiated a debate in Korea about how far the Commission could challenge the government and the president. According to Kim, staffers at the NHRCK also perceived this as a defining moment for the organization; no public body had so publicly disagreed with the president before, especially on

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<sup>42</sup> Kim says that the issues caused by the Iraq deployment are considered the most representative case of the NHRCK showing the public its independence from the government (Kim 2010a, 55). At the tenth anniversary of the NHRCK, experts agreed that the Commission's opinion opposing the war in Iraq was one of the top five agendas set by the NHRCK (others were its recommendations to amend NEIS, abolish the National Security law, and to establish the National Action Plan for Promotion and Protection of Human Rights).

<sup>43</sup> The final statement lays out the NHRCK's position as opposing the war in Iraq, which is a softened version of specifically opposing the deployment.

such a crucial issue, and the Commission did not easily come to the decision to do so (Kim 2010b).

The public debate between the NHRCK and the government over Korea's deployment of troops to Iraq shows Roh's deep commitment to the Commission's independence.<sup>44</sup> After the events of 9/11 and the United States' subsequent declaration of war on terrorism, concern grew in Korea over the possibility of war in Iraq. Beginning in November of 2002, the United States began to inquire through diplomatic channels about whether Korea might support the United States in this conflict, providing humanitarian assistance, helping to rebuild Iraq, and deploying noncombatant troops (NHRCK 2008, 7). The NHRCK's opposition to Korean support of action in Iraq is regarded as one of its biggest challenges to the Korean government, and the chairperson of the NHRCK risked losing his position in making this stand; however, in the end, the incident helped the NHRCK to establish its independence from the government (Chung 2011c, 209–210).

After two phone calls between President Roh and President Bush, on March 10 and March 20, 2003, it became clear that a decision must be made about how to answer the United States' request for support for the war (NHRCK 2008, 7). President Roh convened a meeting of the National Security Council on March 20, 2003, and made his position public: he planned to support the war in Iraq and provide the United States with forces for reconstruction and medical assistance (NHRCK 2008, 9). President Roh stated that he was aware of opposition to the deployment, but he concluded that his decision was a pragmatic one, considering Korea's past and future relations with the United States. He asked the members of the National Assembly to approve his request for troop deployment to Iraq (NHRCK 2008, 7).

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<sup>44</sup> For more information on the deployment to Iraq, see Juang (2015) and NHRCK (2008).



On March 26, 2003, a few days after the president's statement had drawn nationwide attention, the NHRCK issued a public statement opposing the war in Iraq. The president's decision, they said, violated the values and principles of human rights. In its statement, NHRCK recommended that "the government and the National Assembly approach the issue using the principles of anti-war, peace, and human rights" as laid out in the Universal Declaration of Human Rights, and it pointed out its "duty to protect the right to life and safety of the citizens of Korea, and to promote the principles and values of the Constitution of the Republic of Korea, which promotes world peace and renounces wars of aggression" (NHRCK 2003, 35–36). Furthermore, it suggested that "the South Korean government and the National Assembly must take future national interests and humanitarian issues into consideration on the war on Iraq" (NHRCK 2003, 36).

The NHRCK's statement voicing opposition to the war from its new position as a public body came as a surprise to everyone in Korea; it created a "national debate" over whether the NHRCK could or should publicly issue an opinion that contradicted the public positions of the government and the president. Several civil society organizations welcomed the statement, but most politicians—from both the ruling and the opposing parties—criticized the NHRCK's action as inappropriate. Some academics argued that the NHRCK's statement presented a challenge to the authority of the government; these scholars argued that, while different governmental bodies can hold diverse opinions, government bodies should not publicly oppose decisions proposed by the president for the approval of the National Assembly. Others, like Tae-ho Lee from People's Solidarity for Participatory Democracy, welcomed the statement, saying that it represented a break between an institution charged with promoting human rights and a government that was attempting to deploy forces without consolidating public opinion behind their position.

President Roh supported the Commission's independence and its right to publish a differing view, even one that publicly embarrassed the president, by saying, "It is the role of the government to be in charge of all matters related to foreign affairs and security, but the body that deals with human rights protection and promotion may have different views on these issues, as the government may miss things out." President Roh again confirmed the independence of the NHRCK from the government on December 10, 2003, at the fifty-fifth anniversary of the Universal Declaration of Human Rights, where he said that the NHRCK's opposition was "a commendable phenomenon." He pointed out that democracy works by respecting those with different views and trying to understand them, and that in a democracy, it is normal for a government and an NHRI to have opposing views (Presidential Secretariat 2004, 554–555). Roh further praised the NHRCK's importance and independence on September 14, 2004, at the 7th International Conference of National Human Rights Institutions, hosted by the NHRCK; Roh said that the establishment of the Commission was a "turning point" for Korean human rights history and pointed out that although the "chairperson and the commissioners are appointed by the president [. . .] their functions and roles are completely independent from the government. Sometimes the NHRCK has put the president in a troubling position by publicly opposing the policy approved by the president," but the "National Institutions are created to express different views from the president" (Presidential Secretariat 2005, 320). This statement seems to be a clear defense of the NHRCK's actions on the matter of troop deployment to Iraq.

Despite the opposition of the NHRCK, the National Assembly passed the president's proposal on April 2, 2003, with 179 in favor, 68 against, and 9 abstaining (*Voice of Korea* 2003). However, this very political gamble on the part of the NHRCK, and President Roh's reaction (or nonreaction) to it, increased the NHRCK's confidence and cemented its status as an independent

and legitimate organization in the minds of the Korean public. The former Secretary-General of the NHRCK, Choi Young-ae, said that Roh clearly understood that NHRIs exist to speak up against the government, and that Roh let the NHRCK do its work without interference.<sup>45</sup> The NHRCK's statement on the Iraq war helped consolidate the NHRCK's status both domestically and internationally; the statement and Roh's reaction to it showed the rest of the world that *seonjin* Korea respected human rights and guaranteed the independence of its NHRI, even in highly political and contentious situations.

#### 5.4.2 Consolidation of NHRCK at the International Level

During this period, the NHRCK also gained a positive international reputation. The Commission increased its cooperation at the international and regional levels, quickly becoming a linchpin of the worldwide network of NHRIs and gaining a good reputation with the international human rights community, including the UN. The NHRCK became a model NHRI that was imitated and studied by other *seonjin* countries, such as Japan, India, and China, and other developing countries in Southeast Asia and Africa (Chung 2011c, 218).

The NHRCK hosted some key meetings, which contributed to building its good international reputation. The former Director-General of the NHRCK said that the Seventh International Conference for National Human Rights Institutions, hosted by the NHRCK (an honor for which it lobbied actively), was the event at which the relatively new NHRCK made its successful debut to the world.<sup>46</sup> The meeting was expected to “raise the profile and international standing of both the Commission and the Republic of Korea,” and it appears to have done so (NHRCK 2003, 17). The then-chairperson of the Commission, Kim Chang-guk, stated in the

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<sup>45</sup> Choi Young-ae (former Secretary-General of the NHRCK), in discussion with the author.

<sup>46</sup> Choi Young-ae (former Secretary-General of the NHRCK), in discussion with the author.

outcome report for the conference that “Korea was able to raise its reputation in the international human rights community through this International Conference, at which human rights people from around the world [. . .] gathered together. It did so by publicizing Korea’s efforts and the progress that has been made toward consolidating democracy and advancing human rights” (NHRCK 2004, 5). NHRCK also hosted the ninth annual meeting of the Asia–Pacific Forum of National Human Rights Institutions in September 2004.

In addition to hosting meetings during this period, NHRCK also actively participated in key human rights meetings and advocated for global human rights concerns. NHRCK independently participated (not as a representative of Korea, but as an independent body) in the UN Commission on Human Rights, the UN Human Rights Council, and various treaty body meetings, where it gave information about human rights situations in Korea. The Commission also actively participated in regional and international NHRIs meetings; for example, the NHRCK began representing the Asia–Pacific region at the ICC Sub-Committee on Accreditation in 2006, a position that it still holds (NHRCK 2007a, 22). The NHRCK was also very vocal about regional and global human rights issues during this period. For instance, in 2003, NHRCK sent a total of fourteen letters to the governments of countries where human rights violations took place, urging the governments to take appropriate measures; the recipient countries included India, Sri Lanka, Thailand and Mongolia (NHRCK 2003, 120). NHRCK also assisted in the establishment of NHRIs in Nepal and Pakistan (NHRCK 2005, 19).

The NHRCK also stepped into several high-profile leadership roles during this period, reflecting both the international community’s recognition of the NHRCK as a credible and respected NHRI and the NHRCK’s international legitimacy-seeking behavior. Following the 2006 military coup in the Fiji Islands, the NHRCK took over the chairmanship of the Asia–

Pacific Forum, just four years after it became a full member of the organization; it has served in the role ever since. It was a remarkable advancement that recognized the NHRCK's credibility at the regional level (NHRCK 2007a, 98). At the nineteenth ICC conference, in March 2007, the NHRCK was elected as the vice chair of the ICC, and it served in that position for two years.<sup>47</sup> These appointments at the regional and international levels demonstrate the international human rights community's rapid recognition of the NHRCK as a credible and respected institution. As the NHRCK's self-assessment states, its election to these roles implies that "the Commission successfully solidified its status as a National Human Rights Commission in the international community" (NHRCK 2007a, 96). The NHRCK also compared its assumption of the vice chair position at the ICC to the election of Ban Ki-moon as the UN Secretary-General and Kang Kyung-wha as the UN Deputy High Commissioner for Human Rights, seeing all of these as important achievements for Korea in the international arena (NHRCK 2007c).

The fourth chairperson of the NHRCK, Ahn Kyung-whan, connected the regional and international recognition of the NHRCK to Korea's ambition to become a human rights *seonjin* state in his inauguration speech, given on October 20, 2006,

The Republic of Korea is praised by the international community as being the only country that has achieved both democratization and economic development in a short period of time after independence. The fact that one small country, which the UN built upon ashes of war, produced the chief of the UN demonstrates the current status of the

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<sup>47</sup> In this position, the NHRCK carried out substantial work for NHRIs participating in the ICC Bureau, which is composed of the chairperson, the vice chairperson, representatives of the four regional groups, and the ICC Secretariat. In assuming important positions such as the ICC vice chairpersonship and Asia-Pacific representative member to the ICC Sub-Committee on Accreditation, the NHRCK further contributed to the protection and promotion of human rights in the international arena. The new ICC chairs are expected to greatly contribute to the protection and promotion of the national human rights by introducing and applying international human rights standards; they are also expected to contribute to international human rights issues, including the recruitment of the ICC Geneva representative, through close relationships with the international community.

Republic of Korea in the international community. [. . .] We should let the world know about the human rights achievements made in Korea. Furthermore, we should build a stable foundation to leap toward being *seonjinguk*, leading the world in the field of human rights by sharing responsibility for *hujinguk* (underdeveloped and developing countries) (Ahn 2006).

The rise in the NHRCK's international reputation was also remarked upon by President Roh. During the NHRCK's report to the president on August 21, 2007, President Roh expressed his thanks to and support for the NHRCK's work, specifically congratulating the organization for its successful work in its roles as the vice chair of the ICC and the chair of the APF, roles that consolidate its status "as an advanced organization"; in the same discussion, he asked the NHRCK to continue to strengthen its international capacity (NHRCK 2007a, 44).

The international human rights community also positively evaluated the NHRCK. For instance, after visiting Korea, the UN Special Rapporteur, who is responsible for promoting and protecting the right to freedom of opinion and expression, stated that he "commends the work of the National Human Rights Commission of Korea, particularly in finding a violation in over a dozen cases related to freedom of opinion and expression and freedom of assembly between 2004 and 2010" (LaRue 2011a, ¶ 102).

## 5.5 International Legitimacy-Seeking through Other Means

### 5.5.1 Membership on the UN Human Rights Council

On May 9, 2006, Korea won 148 votes to become one of the first members of the UN Human Rights Council, which was established in 2006 to replace the Commission on Human Rights. According to the government's self-assessment, it was "a demonstration that Korea has

secured its reputation as one of Asia's leading promoters of human rights and a democratic nation, and represents recognition in the international community that Korea played a constructive role in the Commission on Human Rights, the predecessor body of the Human Rights Council" (MOFAT 2007, 120). For Korea, becoming a member of the council, both fulfilled its desire to be a respected human rights *seonjinguk* and indicated that the international community recognized it as such. Korea's pledge for candidature illustrates how Korea feels about itself as a country with a good human rights record:

The Government of the Republic of Korea (ROK) places great importance on human rights as a universally shared value steadfastly advanced by the United Nations for six decades. The promotion and protection of human rights is a priority in the ROK's national as well as foreign policy goals.

Having been inspired by the UN's commitment to human rights and fundamental freedoms throughout its own process of democratization and economic development, the Republic of Korea attests to the imperative of human rights in the betterment of societies. The Government is making every effort to achieve continued improvements in the human rights situation within the Republic of Korea. It also endeavors to spread democracy and human rights worldwide (Republic of Korea 2006).

In this pledge, Korea appeals to its strong human rights records, highlighting its ratification of international human rights treaties and extensively discussing the NHRCK and its activities. This indicates that Korea recognized that having a credible NHRI would influence the international community to see Korea as a potential legitimate member of the council. The pledge continues thus:

In the Republic of Korea, the National Human Rights Commission (NHRC) was established in November 2001 with the mandate to investigate and remedy human rights violations, to provide education and raise public awareness in the field of human rights, to conduct research, and to recommend legislative, institutional, or policy initiatives relating to human rights. The Commission has become a vital force for the promotion and protection of human rights in the Republic of Korea. In particular, in January it put forward its own proposal for a “National Human Rights Plan of Action (NAP)” for the period 2007–2011 to serve as a guideline for a comprehensive national plan for the advancement of human rights (Republic of Korea 2006).

#### 5.5.2 Appointments of Koreans to High-Level Positions

Other examples of international legitimacy-seeking efforts under Roh Moo-hyun include the government’s efforts to have a number of Koreans appointed to high-level positions at the UN and at international meetings. The efforts were largely successful, resulting in Koreans taking up an unprecedented number of high-level positions during this time, including the Secretary-Generalship of the UN. A similar case of international legitimacy-seeking can be found in Kathryn Sikkink’s case study of Argentina, which describes the successful restructuring of the country and its movement “from pariah state to global protagonist” in human rights. After cementing its status as a global human rights leader, several Argentines were appointed or elected to high-level positions in the field of international human rights (Sikkink 2008, 15).

Like Argentina, Korea worked hard to have its nationals appointed to high-level positions at international organizations and meetings, including those related to human rights. According to a diplomatic white paper issued by the Ministry of Foreign Affairs and Trade, the government encouraged “Korean nationals to assume high-profile positions on Executive Committees and



senior positions in major international organizations,” and worked to expand “the participation of Korean nationals in the Secretariats of various international organizations” to make that participation commensurate with Korea’s “growing economic power and status” (MOFAT 2007, 124). The Ministry further states that it will continue with these efforts to meet “the expectations of the international community and also further [enhance] the national image” of Korea (MOFAT 2007, 124). Korea used so-called Summit Diplomacy,<sup>48</sup> which aims to illustrate “Korea’s diplomatic vision to the international community and encourage Korean nationals abroad” to work for international organizations in order to enhance “the national image” and “national interests” of Korea (MOFAT 2007, 88). These government statements and policies clearly show that the appointment of Koreans to positions in international organizations was seen as a way for Korea to become respected by the international community, an element of Korea’s desired *seonjingung* identity.

During this period, Korea was elected by UN member states to serve in major UN meetings and bodies. For example, in 2001, for the first time since Korea had become a member to the UN, a Korean national, Han Seung-soo, was elected the president of the fifty-sixth session of the UN General Assembly. In 2005, Korea was appointed to chair the First Committee of the 60th session of the UN General Assembly, and the Korean government was elected to the Executive Committee and the Commissions of twelve international organizations, including several human rights–relevant bodies: the Committee on the Rights of the Child (member), the UN Commission on the Status of Women (member), the UN Commission on Crime Prevention and Criminal Justice (member), the United Nations Children’s Fund (Executive Board member),

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<sup>48</sup> Summit diplomacy is a diplomatic approach in which the head of a state fulfills the state’s diplomatic objectives by focusing all national capabilities on the state’s vision and philosophy.

Governing Body of the International Labour Organization (member); and the Executive Governing Body of the Food and Agriculture Organization (member) (MOFAT 2006, 109). Koreans were also appointed to as judges to several international courts, including the International Criminal Court (ICC), the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda (MOFAT 2006, 112). Clearly, efforts to place Koreans in positions of international leadership were successfully being made, efforts that were aimed at building “a firmer basis for Korea to further reflect its national interests in the said international organizations” (MOFAT 2006, 110).

The year 2006 marked the high point of Korea’s successes in appointments to high-level UN positions. In September 2006, Kang Kyung-hwa, Director-General of International Organization at the Ministry of Foreign Affairs and Trade, was appointed the UN Deputy High Commissioner for Human Rights at the level of Assistant Secretary-General (United Nations 2006a). According to the Korean government, her appointment to this position could “be seen as a reflection of the remarkable achievements of Korea in the protection and enhancement of human rights and recognition by the international community of these endeavors” (MOFAT 2007, 124). On October 13, 2006, Ban Ki-moon was appointed the UN Secretary-General, a landmark appointment that was celebrated as a Korean national victory. On October 24 of that year, President Roh spoke at the banquet organized to celebrate Ban’s appointment:

I believe this happy occasion contains the assessment and expectation of the international community for Korea. We have achieved the world’s tenth largest economy and democratic development in a half-century, from poverty and war-torn ruins. I believe we have developed into a model country that meets the objectives of the UN, such as peace, development, and human rights. In this process, we have received a lot of assistance from

the UN and the international community. Now, we intend to play a more proactive role in resolving various contentious issues faced by the international community (Presidential Secretariat 2007, 383).

Ban's appointment was not only seen as his personal achievement, but as a national accomplishment—the fruit of years of effort. Behind this success were tireless years of political and diplomatic efforts on the part of the government to get him elected; the regime saw a Korean becoming the UN Secretary-General as a means for Korea to become *seonjungk*. The appointment implied “a reflection of the ardent wish of the Korean people not only to assume a larger role in the international community but also to rise to the expectations of Korea in the international community, building upon its national capabilities and its experience of having successfully managed the situation on the Korean Peninsula and achieved economic development and democratization” (MOFAT 2007, 129).

Korea had begun to consider presenting a candidate for UN Secretary-General in mid-2005, knowing that the next UN Secretary-General would come from one of the Asian countries (MOFAT 2007, 128). The then-Minister of Foreign Affairs, Ban Ki-moon, was chosen as the most suitable candidate for the position, and the regime formulated a nationwide task force to campaign for Ban's election—a task that Roh himself participated in. Until Ban was appointed Secretary-General, he was not well known to the international community or even to the Korean general public; his success was achieved through the well-crafted strategy and political will of the Korean government. The key was not to promote as a candidate anyone who might be objected to either by China or the United States; the UNSG cannot be elected if any of the Permanent Five countries exercises its veto power, and Ban Ki-moon, a career diplomat, was Korea's safest choice: “first and foremost, he was the only candidate acceptable to all five

permanent members of the Security Council” (Bertrand 2016, 2). The Security Council voted to recommend Ban Ki-moon to the General Assembly, and on October 13, 2006, the General Assembly elected Ban Ki-moon the UN’s eighth Secretary-General (United Nations 2006b).

The Korean government’s extensive efforts to get Ban elected included taking domestic political risks. Amid the UNSG election campaign, then-Foreign Minister Ban was met with a domestic demand to resign as Foreign Minister because of the Ministry’s failure to rescue Kim Sun-il. Kim, a crew member of a Korean commercial ship, was abducted and killed by a militant group on June 22, 2004, after the Korean government refused to grant the group’s demand that Korea withdraw its forces from Iraq. All eyes in Korea were on Kim’s abduction, hoping for his safe return home; when he was killed, there was a strong call from the public and from politicians that the government be held accountable for his death (Hong 2004). Many expected that the Minister of Foreign Affairs would be sacked as a result of its failure at diplomatic negotiation, and Ban indeed submitted a letter of resignation in July 2004. However, Roh, with Ban’s candidacy for UNSG in his mind, is believed to have taken all the blame upon himself; he refused to accept Ban’s resignation (Park 2015).

The Korean government also strategically appealed to UN Security Council countries to promote Ban’s candidacy. Ban Ki-moon was the only candidate who traveled to all fifteen members of the Security Council (Bertrand 2016). Ban also accompanied President Roh on his visit to Africa in March—a visit that Roh undertook to favorably position Ban as a candidate. The announcement that Korea would increase their Official Development Assistance (ODA) to Africa, from \$31 million USD to \$100 million USD, which came around the same time, is also

associated with Ban's campaign.<sup>49</sup> Many, though, see Ban Ki-moon's service as the UNSG as being one of the Korea's contributions to the international human rights community (NHRCK 2011, ix).

### 5.5.3 Ratification of International Treaties

During the period 2001–2006, Korea's ratification of treaties increased drastically. Between 1948 and 1960, Korea had ratified only 129 treaties, 88 bilateral and 41 multilateral; in contrast, between 2001 and 2006, 470 treaties—367 bilateral and 103 multilateral—were ratified and became effective. Of those 470 treaties, 106 of them—90 bilateral and 16 multilateral—were completed in a single year, 2006 (MOFAT 2007, 182–183). The increase in the number of treaties ratified by Korea demonstrates the country's intention to be an active part of the global community. During this period, the Ministry of Foreign Affairs also published, in March of 2006, a guidance book on the treaty-making process and, in October 2006, organized a meeting aimed at promoting understanding of the treaty-making process in government agencies, local entities, scholars, and students (MOFAT 2007, 186–187).

## 5.6 Conclusion

In this chapter, I established how the NHRCK consolidated its position, becoming firmly rooted in the fabric of Korean domestic society; I also described how the NHRCK gained prominence as a model institution at the regional and global level. Roh Moo-hyun vigorously pursued the goal of becoming *seonjinguk*, and Roh's concept of *seonjinguk* was deeply bound up

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<sup>49</sup> President Roh paid another visit to Nigeria between March 9 and March 11, 2006, during which he discussed with President Obasanjo ways to promote bilateral cooperation. By announcing Korea's Initiative for Africa's Development, the primary objective of which was to increase the amount of Korea's ODA to Africa threefold by 2008, President Roh showed Korea's determination to assume its role as the world's twelfth largest economy in promoting global development (MOFAT 2007, 112).

with the notion of human rights; the NHRCK was seen as a way to further the state's goal of joining other advanced countries. The government thus ensured that the NHRCK was not interfered with, even when their position on very controversial issues challenged the authority of the president himself. The government's promotion of human rights enabled the NHRCK to quickly gain a good international reputation, and it was recognized as a model NHRI, taking up leadership roles in international meetings of NHRIs. As this chapter has shown, Korea's pursuit of *seonjinguk* status resulted in the appointment of several Koreans to high-level positions in international organizations.

This chapter endeavored to answer not just *what* makes a government promote NHRIs but *how* and *why* a government might actually help an NHRI (in this case, the NHRCK) prosper and develop. In this chapter, I established how the developmental idea of becoming *seonjinguk* provided a baseline that encouraged Korea to promote the NHRCK's independent activities, because having a strong, independent NHRI was an appropriate thing for a *seonjinguk* to do. Through a detailed ethnographic analysis of events and of statements from the government, the NHRCK, and key domestic and international actors, this chapter showed how important *seonjinguk* status was to Korea and what intense efforts they put into attaining that status by increasing Korea's international legitimacy. Although there are several explanations of why states comply with international human rights norms, this chapter provided another explanation to the discussion: Korea was willing to allow the NHRCK to restrain the state's power because they saw the organization as one way to obtain international legitimacy and thus to achieve its long-term goal of being recognized as *seonjinguk*.

## CHAPTER 6

### DIMINISHMENT OF THE NHRCK (2008–2012)

*[T]here is no hope for the situation that the NHRCK is in now.*

— (MINBYUN 2010)

#### 6.1 Introduction

As previous chapters have shown, under the progressive governments of Kim Dae-jung and Roh Moo-hyun, the NHRCK enjoyed autonomy and firmly rooted itself in both the domestic and international space. With the inauguration of the new conservative regime headed by Lee Myung-bak, the NHRCK went into its first period of recession.<sup>50</sup> The new regime's attempts to weaken the NHRCK—some successful and some unsuccessful—began immediately after the election in early 2008 and persisted for years. These attempts included an attempt to place the NHRCK under the office of the president and an attempt to downsize the Commission by 21%. Lee's government faced strong resistance to these tactics, and both domestic NGOs and various international human rights actors, including the UN, the ICC, and international human rights NGOs, pressured him to reinstate the strong, independent NHRCK. These voices used the appeals to Korea's desire to be *seonjinguk* that had succeeded before, but these rhetorical appeals did not succeed with Lee. How do we understand this situation?

This chapter offers the following explanation: this rhetoric did not work with the Lee administration because Lee's government redefined what it meant to be *seonjinguk* according to

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<sup>50</sup> Kim notes that the NHRCK lost power not only because of Lee Myung-bak's government, but because of internal problems in the NHRCK, including issues with appointing the chairperson and commissioners and struggles between different groups of people—internal problems that have existed since the NHRCK's creation (Kim 2010a).

its own conservative political identity and preferences. The Lee government and its conservative allies not only attempted to reverse the “leftist” policies of the past ten years (Kim 2014, 161), they also modified Korea’s desired national identity. This new national identity was based on a redefinition of the concept of *seonjungkuk* that stressed pure economic growth rather than socioeconomic growth that included human rights. Both progressive and conservative administrations sought international legitimacy in order to reconstruct Korea’s national image and become *seonjungkuk*, but the means of achieving these goals were quite different: the former embraced human rights in its *seonjungkuk* rhetoric, while the latter excluded human rights in its pursuit of becoming *seonjungkuk*.<sup>51</sup>

Lee’s regime still pursued the goal of being *seonjungkuk*—a desire that was demonstrated through many other means. Some previous efforts even intensified: for example, Korea became a chair of the G20 and a member of the OECD-Development Assistance Committee. Lee’s *seonjin*-based policies, however, generally excluded concerns over human rights, and they often suppressed human rights in the domestic sphere. This chapter discusses how the NHRCK was weakened between 2008 and 2012 and how a different type of *seonjin* regime reshaped the country’s human rights policy, resulting in the diminishment of the once-acclaimed NHRCK. By the end of Lee’s term, the NHRCK had lost its independence from the government and its credibility with both domestic and international human rights communities.

The changed position of the NHRCK poses an interesting implication for the study of global norm diffusion. The case of the NHRCK demonstrates that norms continue to develop, being deconstructed and reconstructed even after they have been domesticated. It offers further

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<sup>51</sup> In general, I agree with Kim’s argument that Roh and Lee were similar in several ways, especially their economic policies, which are based upon a neoliberalistic approach; it is here, I contend, that the two regimes’ common grounds for *seonjungkuk* can be found (Kim 2014).



evidence for the importance of taking seriously the domestic context and changes in that context when examining the diffusion of global human rights norms, which continue to change over time. In this regard, Korea's modified identity and Lee Myung-bak's policy preferences excluding human rights offer an interesting empirical case of how norms relating to NHRIs get diffused and either strengthened and weakened over time by changes in the domestic context.

## 6.2 Inauguration of the Conservative Administration of Lee Myung-bak

Lee Myung-bak, a conservative former CEO of the construction unit of Hyundai and a former mayor of Seoul, was inaugurated as the seventeenth president of Korea in February 2008. He entered politics in 2002 as the mayor of Seoul, where he earned the nickname "The Bulldozer" for his development-oriented determination. As a successful businessman who was expected to make the country economically prosper, he rose quickly through the political ranks and eventually won the presidential election in December 2007. The Korean public hoped that Lee's pro-business policies would invigorate Korea's economy and help it to overcome the challenges of the global economy (Yang 2008, 128). His inauguration marked the end of ten years of progressive government under Kim Dae-jung and Roh Moo-hyun, returning Korea to a conservative government premised on "pragmatism" and "promises of economic recovery" (Snyder 2009, 1).

### 6.2.1 Desire to Be *Seonjingung* and the Exclusion of Human Rights

#### 6.2.1.1 Lee's *Seonjingung*: A "Truly Advanced and Globally Prestigious Country"

Lee's election seemed to accelerate Korea's desire to seek international legitimacy and reconstruct the country as a *seonjingung*. Although Lee's definition of *seonjingung* differs from that of the previous two regimes, the underlying desire to become a *seonjingung* seems to be no different

than that of the previous progressive regimes, especially Roh's: Lee, too, praised Korea's economic achievements and emphasized the need to move forward to become a genuine *seonjingu*. Excerpts from Lee's inauguration speech show his version of the country's desired identity very well:

We are welcoming the sixtieth anniversary of the establishment of the Republic of Korea this year. We reobtained lost land and built a country, and we sacrificed lives to secure that country. We all worked hard. As a result, we have achieved both industrialization and democratization in the shortest time in the world. It was accomplished by our will and hard work only. [. . .] What was once the poorest country in the world has become the world's tenth largest economy. Korea has become a country offering help from a country receiving help. Now we can stand shoulder to shoulder with other *seonjin* states. Some call this a "miracle." It is also referred to as "mythology." [. . .] But while we relaxed our attention, the world began to overtake us. *Hujin* states are close on our heels. National competitiveness is going down, and we are threatened by [. . .] unstable resources and financial markets.

I will step up the efforts to keep peace and protect the environment through international cooperation. I will contribute to realizing the universal values of the human being through diplomacy that is commensurate with Korea's economic size and diplomatic capacity. We will actively participate in the UN peacekeeping operations and expand official development assistance. [. . .] Our great leap forward, our historical duty, toward making the country *seonjin* has started. Let's move forward together to create a new mythology beyond the miracle of the Han river (Lee 2008a).

According to Snyder, Lee's "willingness to undertake new obligations that contribute to the spread of peace and the safeguarding of global stability" could be seen as an effort to gain "international recognition as an expression of national pride" and "international affirmation of South Korea's progress" (Snyder 2009, 28). This reading seems confirmed in a diplomatic white paper from the Ministry of Foreign Affairs stating that Korea's diplomatic goal of "enhancing the national image" would be pursued through international cooperation in a wide range of areas, including multi-dimensional diplomacy, ODA, and cultural diplomacy; this white paper does not mention the promotion of human rights, which was not a considered enough of a priority to be included in Korea's goals for international cooperation under Lee (MOFAT 2008, 129–154). This is an enormous difference from the previous regime, whose foreign policy primarily focused on human rights. It appears that during this period, Korea focused on strengthening its ODA procedure as a way of becoming *seonjinguk*—it aimed to match its ODA support to that offered by other advanced countries. For instance, for the first time, the government created a new office within the Ministry of Foreign Affairs that was "entirely responsible for implementing grant aids (Bureau for Development Cooperation within the Office of Multilateral, Global and Legal Affairs), strengthening the legal framework for ODA, and seeking to join the OECD-Development Assistance Committee (DAC) of advanced donors by 2010" (Snyder 2009, 24). The efforts of the government to become a leading ODA donor country bore fruit when Korea finally joined the OECD-DAC in 2010; the government attributed their success—Korea was the first DAC member "emerging from the ranks of the least developed countries"—to "part of the nation's grand vision of a Global Korea" (Ministry of Foreign Affairs 2011; OECD n.d.). The government asserted that by joining the DAC in the OECD, Korea had "increased its role and contribution in the international community" (Ministry of Foreign Affairs 2011).

Another illustration of Lee's vision of *seonjungkuk* is found in his diplomatic priority areas. The 2008 Diplomatic Paper states,

In diplomacy, it is important to strike a harmonious balance between continuity and change. In particular, 2008 is the year of the launch of the Lee Myung-bak administration. Pursuant to the theme of "creative pragmatism," the Ministry will earnestly pursue still more active diplomacy, promoting our national interest and embracing a balanced perspective in an era of constant change. Furthermore, we will focus on nurturing Korea into a "truly advanced and globally prestigious country," the vision embraced by the new government, taking us closer to fully realizing the goal of building a truly "Global Korea" (MOFAT 2008, 5).

Lee's newly introduced branding of Korea as "Global Korea" deserves further analysis, as it provides an entry point into understanding Lee's identity construction and the desires that lay behind the regime's goal to be a genuine *seonjin* state. Some argue that slogan represents Korea's desire to be *seonjungkuk*: "one of the striking themes in contemporary South Korean foreign policy is a strong emphasis on achieving *seonjungkuk* status in international affairs, as articulated in the slogan 'Global Korea'" (John 2015, 38). John also contends that the "discourse of Global Korea was not merely a point of departure in Korean diplomatic practice but was also the key site of Korean national identity construction, as manifest in the discourse of achieving *seonjungkuk* (advanced nation) status through development" (John 2015, 40). Other scholars argue that Global Korea represents a state-driven Korea's national interest and national security as a response to globalization (Watson 2011). Under the Lee administration, the Global Korea rhetoric reached beyond diplomacy and into almost all areas of Korean public policy. What it meant to become *seonjungkuk* under the banner of the Global Korea was explicitly elaborated by

the Foreign Minister Yu Myung-hwan: “we will focus on nurturing Korea into a ‘truly advanced and globally prestigious country,’ the vision embraced by the new government, taking us closer to fully realizing the goal of building a truly ‘Global Korea’” (MOFAT 2008, 5).

Another indication of the government’s definition of a *seonjin* state is Korea’s hosting of G20 and assumption of the G20 presidency. In the run-up to hosting G20 in Seoul, President Lee stated that “Korea will come into global focus as a host of the G20 summit and, by taking on that responsibility, will become a genuinely developed nation” (Oliver 2009). Korea saw the G20 summit as an opportunity to shift its national image from *hujinguk* to *seonjinguk*; the government commented that “Korea hopes to act as a bridge between advanced and developing countries” (Oliver 2009). Korean media, too, saw Korea’s hosting of G20 as an indication that the international community recognized Korea as a *seonjin* state, and saw Korea as meeting “its ambitious goal of becoming a ‘top-notch, advanced’ nation through the historic hosting of the G20 summit” (Lee 2010). In its self-evaluation after the first three years of Lee’s government, MOFAT stated that Korea, “as the first non-G8 Asian country” to host G20, contributed to “elevating Korea’s international stature by making diplomatic breakthroughs” and secured “historic momentum in elevating Korea’s international stature” (Ministry of Foreign Affairs 2011).<sup>52</sup>

#### 6.2.1.2 Exclusion of Human Rights from the Concept of *Seonjinguk*

As discussed in the previous section, Lee enthusiastically pursued a *seonjin* state, partly through enhancing Korea’s ODA system to make it comparable to that of other *seonjin* states and partly through policies focusing on neoliberal economic growth: Global Korea projects, hosting

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<sup>52</sup> The G20 Summit was met with strong opposition from civil society organizations, mostly because of the government’s actions in preparation for the meeting. Several CSOs protested the government’s crackdown on immigrants and homeless people and offensive searches of common people without probable cause. Not all Koreans agreed with the principles that drove G20.

the G20, and serving as the president of the G20. Although “enhancement of human rights diplomacy” was included as one of his hundred priority tasks, policies around human rights were marginalized and did not rise as a priority issue (Presidential House 2008). To some extent, human rights were even oppressed under Lee’s administration. Why did Lee’s regime, which had the same desire to be a *seonjingung* as other previous regimes, employ other means of being recognized *seonjingung* (e.g., ODA, Global Korea, G20) while ignoring human rights—previous administrations’ primary means of becoming like other rich, advanced countries?

Some scholars argue that *seonjin* discourse under Lee’s regime completely denied certain aspects of human rights, especially those relating to economic and social rights. According to Kim Jong Seo, the core of Lee’s *seonjin* policies focused on deregulating corporate activities to help corporations grow and thereby increase national income, create jobs, and resolve poverty; these policies privatized education and medical services, traditionally regarded as public services in Korea (Kim 2012a, 61). The privatization of public policies dissolved the minimum level of social rights that had previously been protected and exacerbated the already-extreme inequality in Korean society (Kim 2012a, 61). In general, economic and social inequality worsened under Lee (Kim 2014, 151), as did civil and political rights, including freedom of opinion and expression, freedom of assembly and association, and the freedom of the media. These rights may have been seen as hindrances to becoming *seonjingung* (Park 2011).

Even had Lee not actively weakened certain human rights in Korea, his kind of neoliberal *seonjin* state would have not been compatible with human rights.<sup>53</sup> Chung argues that a politician’s ideological bent can shape their attitude toward human rights, especially those that are seen as embodying “progressiveness” (Chung 2011c, 213). Kim Jong Seo argues that Korean

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<sup>53</sup> Park Lae-goon argues that Lee’s administration attempted to bring down all human rights at one time by discrediting the general discourse on human rights rather than taking a sectoral approach. See Park (2008, 350).

democratic values, including respect for procedure, protection of freedom of expression, and appropriate use of state power, were greatly reduced over the five years of Lee's rule (Kim 2012a, 74–77). Lee's administration generally was not interested in promoting human rights—indeed, it had almost an aversion to human rights, based on its conservative identity, which conventionally does not fit with the inherent “progressiveness” of human rights.

The regime's priority change can be clearly seen in the president's record of participation in human rights–relevant meetings. For instance, President Lee Myung-bak did not participate in the December 10, 2008, meeting organized to celebrate the sixtieth anniversary of the Universal Declaration of Human Rights, although he was invited by the NHRCK, who organized the event; Lee Myung-bak declined, citing other commitments. The two previous presidents, who prioritized human rights events, both attended the two anniversary celebrations held during their administrations: President Roh Moo-hyun participated in the fifty-fifth anniversary of the UDHR in 2003 and President Kim Dae-jung participated in the fifth anniversary of the NHRCK in 2006 (Lee December 15, 2008).

Some critics worry that human rights are often disregarded in the name of “law and order,” a notion that was emphasized by Lee Myung-bak's government (Lee December 15, 2008). The government's promotion of law and order over human rights (notions that are supposed to complement one another) may have given government agencies tacit permission to ignore human rights in favor of law and order.<sup>54</sup> In the lead-up to the Korea G20, a series of newspaper articles ran, focusing on “the way to become *seonjinguk*” through establishment of “law and order.”<sup>55</sup>

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<sup>54</sup> Despite this, several scholars argue that both the rule of law and respect for human rights have decreased during Lee's administration. See, for instance, Chung (2009).

<sup>55</sup> This is contradictory to the campaign carried out by the NHRCK and *Seoul Newspaper* in 2005 under the title “The Way to *Seonjin* Human Rights State.” Both campaigns aimed at becoming *seonjinguk* by doing what other *seonjinguk* do, but they used different approaches: the 2005 campaign argued that respecting human rights was the

While civil society organizations spoke out against the government's suppression of freedom of association and assembly around the G20 summit, this series advocated that Korea should stop the "*hujinguk*"-style protests if it aimed to be *seonjinguk*, making its point by referring to the cases of other advanced countries, such as Japan and Germany (Lee 2010, Yoo 2010, Park 2010). The chairperson of the NHRCK, Anh Kyung-hwan, targeted the government's tactic of opposing law against human rights, saying that "In democratic society, rule of law and human rights are not competing with each other, but [. . .] are running together as the front wheel and back wheel of a bicycle. Therefore, it is a setback to push back human rights in the name of rule of law in a democratic society, and it would mean the recession of human rights" (Ahn 2008).

### 6.3 Recession of the NHRCK (2008–2012)

The status of the NHRCK declined quickly and sharply after Lee Myung-bak's government was inaugurated. A long-standing NGO called MINBYUN—Lawyers for a Democratic Society criticized Lee's administration, saying, "From the beginning of the current administration, the Korean government ignored human rights, considering the concept of human rights to be a rebellious idea. The Korean government did not welcome the fact that the independent human rights body had been established by the recommendation of the UN—that the NHRCK belonged neither to the legislative branch, the judicial branch, nor the administrative branch" (MINBYUN 2010). Not only did the NHRCK see its international reputation deteriorate during Lee's time, the rate of acceptance for NHRCK recommendations also declined drastically in all areas, including human rights violations, discrimination cases, and policy advice. The rate

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way to be *seonjinguk*, while Lee saw respecting human rights (i.e., protection and promotion of freedom of association and assembly) as a hindrance to becoming *seonjinguk*.



of acceptance of policy advice, which had stayed at 75% during the administrations of Kim Dae-jung and Roh Moo-hyun (2001–2007), dropped to 38% under Lee’s regime (Cho 2011, 182).

Table 4 shows the change of acceptance rate over time. The plummeting acceptance rate implies that the culture of acceptance that had existed in previous governments is now gone and that government bodies no longer respect the authority of the NHRCK (Shin 2011).

Table 4. *Acceptance Rate of Policy Advice and Expression of Opinions*

	Number of policy recommendations and opinions	Fully accepted (number)	Fully accepted (rate)	Partially accepted (number)	Partially accepted (rate)	Not accepted (number)	Not accepted (rate)
2001	1	0	0%	1	100%	0	0%
2002	25	15	60%	6	24%	4	16%
2003	28	14	50%	8	29%	6	21%
2004	28	6	21%	14	50%	8	29%
2005	25	6	24%	9	36%	10	40%
2006	24	3	13%	14	58%	7	29%
2007	32	7	22%	11	34%	14	44%
2008	32	9	28%	6	19%	5	16%
2009	30	5	17%	3	10%	1	3%
2010	22	2	9%	1	5%	3	14%
2011 (as of June)	13	2	15%	2	15%	2	15%

Source: Shin (2011).

Lee's administration clearly saw the NHRCK not as a means to become *seonjingung*, but as a hindrance to becoming *seonjingung* as Lee defined it. By the end of Lee's administration, civil society members had almost given up on reinstating the NHRCK to its former glory; the NHRCK had become an institution with little credibility in the eyes of the domestic or international human rights community.

It is not unusual for an NHRI to weaken after a change in administration; governmental political preferences also shape the destiny of NHRIs in "other wealthy, developed states with stable democracies" (Renshaw and Fitzpatrick 2012, 176). For instance, in 1998, the Australian Human Rights Commission released a report entitled "For Those Who've Come across the Sea" criticizing the treatment of detainees under Prime Minister John Howard, who served the office from 1996 to 2007. The report found that the treatment of children was in violation of human rights and made a recommendation to the government to take alternative measures other than detention. However, the government dismissed the report by stating, "the Chief General Counsel of the Australian Government Solicitor has advised that detention of asylum seekers is not in principle an infringement of Australia's human rights obligations" (Sidoti 1999); under the conservative government, the Australian Commission's budget was cut by AU\$7.3 million between 1996 and 1999. Despite the Commission's recommendation, Australia's practice of detention continued, changing only after the installation of a new government in 2007. According to Renshaw and Fitzpatrick, this Australian case illustrates that domestic political preference can determine governmental receptiveness to NHRIs' recommendations (Renshaw and Fitzpatrick 2012, 176–177).

However, the extent of the NHRCK's decline after the regime change in Korea was quite extraordinary. The case of Korea's NHRI, which experienced drastic ups and downs depending

on the political regime in power, shows that NHRIs do not function in a political vacuum—they are highly susceptible to domestic policy preferences. Lee’s administration excluded the NHRCK from preference in its policies, downsizing the Commission and compromising its independence. This shows the importance of delving into the domestic context in which NHRIs exist; this domestic context, which is constantly constructed, deconstructed, and reconstructed, is where norms are diffused and reshaped over time. In addition, the example of Korea shows the malleability of international human rights norms when the domestic political terrain changes.

In this section, I describe in detail the process of the NHRCK’s diminishment in Korea: first, its independence was compromised by the government’s attempt to place the NHRCK under the office of the president; next, a severe budget cut of 21% was implemented, reducing the institution’s effectiveness; then, a new chairperson was appointed, and the NHRCK was reinstitutionalized as a political government agency serving the preference of the political regime. These changes led to the severe deterioration of the NHRCK’s reputation, which was reflected in the international human rights community’s campaigns and statements.

### 6.3.1 Attempts to Place the NHRCK under the Office of the President

The attempts to weaken the NHRCK started as soon as Lee Myung-bak was elected. Cho states that these actions were intended by the conservative government to restore the “lost ten years” that were ruled by progressive governments (Cho 2011, 176). As mentioned, Lee’s conservative political ideology did not allow for the NHRCK’s independent functioning. During the transitional period, on January 16, 2008, the Presidential Transition Committee recommended that the NHRCK be placed under the direct supervision of the office of the president. The rationale for this recommendation was that placing it under the president’s direct supervision would make the NHRCK more powerful; the move was bundled under a general

restructuring to increase the efficiency of governmental organizations. This proposal, which put the independence of the Commission in jeopardy, was immediately met with criticism from the domestic and international human rights communities.

Domestic human rights experts and civil society organizations went public with their strong opposition to the proposal. On January 23, 2008, a group of human rights organizations demanded that the government guarantee the independence of the NHRCK and repeal the proposal, arguing that the plan implied an intention to weaken the functioning of the NHRCK and indicated that the human rights situation in Korea was likely to deteriorate. A group of NGOs argued that the proposal was based on political intentions rather than on objective judgment, and they strongly urged the government to retract the proposal. The NGOs also cautioned against the ruling party's proposal to limit the mandate of the NHRCK to only North Korean human rights issues; one scholar, Kim Jong Seo, argued that the Commission would become a North Korean Human Rights Commission, not the NHRCK (Kim 2012a, 60). The NGOs stated that they would not tolerate the attempt to reduce the NHRCK to a servant of the regime, aimed at realizing a specific political ideology (Pressian 2008).

The international human rights community paid a great deal of attention to this issue and called for the proposal's repeal. On January 17, 2008, the UN High Commissioner for Human Rights, Louise Arbour, expressed her concerns about the proposal. In her open letter to the chairperson of the transition committee, she urged the committee to reconsider its decision because "the intended placement could negatively influence the international standing of the NHRCK and could erode its national position. It could also impact on public perceptions of its independence and compliance with the internationally accepted benchmarks for NHRIs, the Paris Principles (UN GA resolution 48/134). This could in turn affect the NHRCK accreditation with

the ICC and the Republic of Korea's excellent reputation in the international human rights system." She went on to praise the current NHRCK, calling it "an internationally highly regarded national human rights institution (NHRI), indeed a model for other countries," and pointing out its status as a key member of the Asia-Pacific Forum and a vice chair of the ICC (Arbour 2008). The High Commissioner's letter was sent one day after the government made its plan public. This immediate, strong recommendation from a top UN human rights official demonstrates the intensity of the international human rights community's concern over the NHRCK.

On January 18, 2008, Amnesty International also strongly opposed the proposal, urging the president-elect to retain the NHRCK's independent status in a public statement entitled "Grave Concerns for the Future Independence of the National Human Rights Commission of South Korea." The organization stressed the importance of the NHRCK's independence, arguing that the proposed restructuring would be "a setback for the promotion and protection of human rights in South Korea," as the NHRCK's compromised independence "would undermine the objectivity and authority of the NHRC to speak out on human rights concerns in the country without fear of censorship" (Amnesty International 2008).

Pressure to maintain the NHRCK's independence also came from regional human rights NGOs. The Asian NGOs Network on National Human Rights Institutions (ANNI)<sup>56</sup> gave a statement, dated January 22, 2008, that strongly criticized the Korean government's plan to change the status of the NHRCK and called for the proposal to be immediately withdrawn. It stated that the NHRCK "has been regarded as a model for other countries" and that the restructuring proposal "threatens the very existence of a body that has always been a beacon of

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<sup>56</sup> The Asian NGOs Network on National Human Rights Institutions (ANNI), established in December 2006, is a network of Asian NGOs and human rights defenders working on issues related to NHRIs. ANNI has thirty-three members from twenty-one countries or territories. The organization works toward strengthening NHRIs in Asia and advocates for the improved compliance of Asian NHRIs with international standards, including the Paris Principles. See [https://www.forum-asia.org/?page\\_id=19132&nhri=1](https://www.forum-asia.org/?page_id=19132&nhri=1).

independence and credibility among other national institutions in Asia and the world” (ANNI 2008).

Faced with this strong and immediate opposition from international and domestic human rights communities, the government withdrew its plan to place the NHRCK under the president’s office. An unnamed staff member from the NHRCK commented that the government had changed its plan because of the outcry from international communities (Lee 2008b). Although this plan was not implemented, the government did not stop its attempts to weaken the NHRCK; as Chung rightly points out, Lee’s regime was only taking a break from its long-term efforts to weaken the NHRCK (Chung 2011c, 212). The government’s policies against the Commission became more aggressive and systematic as the NHRCK kept speaking out against the government.

### 6.3.2 Downsizing the NHRCK

In March 2009, the Minister of Public Administration and Security proposed a significant downsizing of the NHRCK aimed at increasing “organizational efficiency.” The Ministry’s proposal entailed cutting the NHRCK staff by 21% (reducing the number of staff from 208 to 164), closing down three of the NHRCK’s regional offices (Busan, Gwangju, and Daegu), and merging the policy and education divisions. This proposal triggered concerns about the recession of democracy in Korea, and, specifically, concerns that the NHRCK would become an alibi institution. The Ministry’s announcement of this proposal came after the NHRCK had expressed critical opinions about the government’s use of force in dealing with mass protests the United States beef trade deal<sup>57</sup> and about the death of six protesters during a forced eviction operation.<sup>58</sup>

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<sup>57</sup> Between May and September 2008, a series of mass candlelight vigils were held to protest the government’s decision to approve importation of beef from the United States. Chung argues that the NHRCK’s opinion on the

This proposal brought another wave of criticism against the government from both inside and outside the country. The UN reacted again: on February 25, 2009, the UN High Commissioner for Human Rights, Navanethem Pillay, sent a letter to the Foreign Minister, Yu Myung-hwan, urging the government to guarantee the independence of the NHRCK and to reconsider its proposal, saying that “any measure that will negatively impact on the NHRCK will directly influence its regional and international reputation and functioning as well” (NHRCK 2009b). The network of global NHRIs also added its voice to the criticism of the Korean government. The chair of the ICC, Jennifer Lynch, and the Chair of the Asia–Pacific Forum, Tan Sri Abu Talib Othman, also delivered their concerns regarding the government’s decision through an official letter to the Ministry of Foreign Affairs and Trade. Both stressed that, should the government go ahead with its plan, the NHRCK’s independence would be compromised and its effective functions would be negatively impacted. In addition, they stressed that the action would adversely affect the reputation of the NHRCK and would have negative consequences on Korea’s candidacy for the ICC chair position, which was to be voted on in 2010 (Chung 2011c, 211).

International and domestic human rights NGOs expressed their concerns as well. Amnesty International issued a statement on March 29, 2009, urging the president’s cabinet to reconsider the proposal. It warned that the proposal would jeopardize the NHRCK’s effectiveness and independence and compromise the NHRCK’s international reputation of being “an exemplary human rights institution in the Asia–Pacific region” (AmnestyInternational March 29, 2009). The ANNI also sent a letter to the ICC urging it to take action against the Korean

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protest, which called for the government to protect the human rights of the protesters, was one of the key incidents that upset the government (Chung 2011b, 25).

<sup>58</sup> The Yongsan eviction and demolition of January 20, 2009, in which six people died.

government's decision to downsize the NHRCK. Notably, most of these opposing voices highlighted the good international and regional reputation of the NHRCK.

The NHRCK itself also reacted strongly against the government's restructuring proposal. The chairperson, Ahn Kyung-whan, made a public statement urging the president to not approve the Ministry's tabled proposal to cut the budget of the organization (Kang 2009). The NHRCK took further action, asking the Constitutional Court to adjudicate the matter as a jurisdictional dispute and alleging abuse of power and procedural problems (MINBYUN 2010). However, the Constitutional Court dismissed the case in October 2010 on the grounds that the NHRCK was not a body established by the Constitution, and that it therefore had no legal right to file a case to the Constitutional Court (Chung 2011c, 213).

The various coordinated efforts of international and domestic human rights communities urging the government not to downsize the NHRCK were in vain. The government approved the plan on March 30, 2009, and officially announced that the NHRCK would have its staff reduced by 21% on April 6, 2009 (Cho, 196–197). Chung argues that the NHRCK's downsizing was “revenge,” meant to paralyze and tame the Commission; compare the NHRCK's cut of 21.1% to cuts made under the plan to other government bodies, which had their personnel reduced by 2% to 0.02% (Chung 2011c, 212).

### 6.3.3 Appointment of New Chairperson of the NHRCK

The NHRCK was further weakened with a change of chairperson in July 2009. The struggle between the government and the NHRCK, which continued to escalate, was highlighted by the resignation of the then-chairperson Ahn Kyung-whan. On July 8, 2009, in his farewell speech, Ahn said that he felt “strongly about the responsibility for a series of unfortunate incidents taking place since the inauguration of the new government,” and stated, “I wish to offer



a turning point for Korea to recover its human rights reputation [which has] [. . .] been seriously damaged in the international community and [for it] to renew its status as a human rights *seonjin* state with an appointment of a new chairperson” (Ahn 2009b). Ahn’s resignation, which came with more than a year of his term left, was tendered “in protest of the efforts to weaken the NHRCK that have persisted throughout the administration’s term”; it aimed to force the government to reconsider its perceptions about the NHRCK and appoint a new chairperson, suitable to serve as chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights—a position that the NHRCK was scheduled to fill (Hankyoreh 2009a).<sup>59</sup> However, after the resignation that was intended to normalize the NHRCK, President Lee Myung-bak controversially appointed Hyun Byung-chul, a law professor with no human rights experience, as the new chair of the NHRCK in July 2009.

Subsequently, the NHRCK did not put itself forward as a candidate for the chairmanship of the ICC and the APF, losing its very likely appointments to these important positions. The standing committee of the NHRCK reached a unanimous agreement “not to put up a representative for South Korea in the upcoming elections being held at the annual general meeting of the Asia–Pacific Forum of National Human Rights Institutions (APF) on August 3”<sup>60</sup> because “we need human and material resources in order to carry out the role of the chair nation successfully, but NHRCK’s capacity has been diminished due to layoffs” (Hankyoreh 2009b).

The appointment of Hyun Byung-chul was controversial even at the nomination stage. A group of concerned experts and human rights NGOs released a “guideline on competencies of chairperson of the NHRCK” on July 13, 2009; it laid out eight key requirements for the new

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<sup>59</sup> Ahn clearly stated that “his resignation was to avoid being elected leader of an international human rights body for which he is one of the strongest candidates” (Park 2009).

<sup>60</sup> The chair nation, selected by the APF, is supposed to serve as the next ICC chair nation.

chairperson and concluded that Hyun was critically flawed in most of these crucial areas (Chung 2011c, 212). Hyun himself revealed that he had no experience in human rights and did not understand that the NHRCK was meant to be independent of the government. For instance, he said in an interview that he believed that the National Security Law should not be abolished, although the NHRCK had recommended in 2004 that the government abolish the law (Chung August 11, 2009). He denied the independence of the NHRCK at the National Assembly on September 18, 2009. Yu Nam-young, one of the three standing commissioners of the NHRCK, expressed his regret that Hyun had been appointed to the chairperson position and resigned his commission as a consequence. In a detailed resignation statement, given on November 1, 2010, Yu stated that his resignation was closely related to Hyun's management of the NHRCK, citing the following breaches: (1) Hyun's statement at the National Assembly denying the independence of the NHRCK, (2) Hyun's rejection of a request to convene a meeting of commissioners, (3) Hyun's abuse of authority in demoting, laying off, and disciplining staff according to his preference on various occasions, and (4) Hyun's delivering an opinion, privately held by himself and few commissioners, to the National Assembly as if that opinion was an official opinion of the NHRCK (People's Solidarity for Participatory Democracy, 2010).

Cho argues that by appointing Hyun Byung-chul, President Lee treated the NHRCK as one of the government branches, which are not concerned with human rights, but with serving the political preference of the regime; the NHRCK therefore became helpless to make interventions into various urgent human rights issues (Cho 2011, 176). The NHRCK's new focus on serving the political agenda of the regime can be seen in its increased activities on North Korean human rights issues. In principle, the NHRCK Act does not mandate that the NHRCK work on human rights issues in North Korea, but, it appears, Chairperson Hyun proactively

changed the institution's focus to comply with the president's preference (Chung 2011a, 166). The budget allocated for North Korean human rights issues doubled during Lee Myung-bak's time; in 2010, when all other NHRCK budgets were cut, the budget for North Korean issues remained at the same level as the previous year (Chung 2011a, 170).

The situation of the NHRCK deteriorated. On November 1, 2010, two standing commissioners, Yu Nam-young and Mun Kyung-Ran, decided to resign from their positions in protest of the government's efforts to further weaken the NHRCK by introducing revised managerial regulations and reducing the rights of the standing commissioners (MINBYUN 2010). After these two resignations, Commissioner Cho Kuk and sixty experts and advisors associated with the NHRCK also submitted their resignations (*Donga Newspaper* 2010, Kim 2010c). In December 2010, the winners of the Commission's Human Rights Award rejected the awards and demanded that Chairperson Hyun step down (Kim 2010b). A number of human rights groups also demanded Hyun's resignation and the reinstatement of the Commission's previous status. Despite the protests coming from inside and outside the Commission, President Lee and Chairperson Hyun continued to run the Commission as they had been, filling the vacant positions with even more problematic people.

#### 6.3.4 Changed Reputation of the NHRCK at the International Level

##### 6.3.4.1 ICC Review

Under Lee's regime, NHRCK was on the verge of having its ICC rating downgraded.<sup>61</sup> When it joined the ICC (now called GANHRI) in 2004, NHRCK received an A rating, and its rating was renewed at the A level at its reevaluation in November 2008. Despite the NHRCK's

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<sup>61</sup> The ICC ratings are one of the most important indicators of NHRI reputation; these ratings are based on how well the NHRI complies with the Paris Principles.

A rating at reevaluation, the ICC Sub-Committee on Accreditation expressed its concern about Lee's attempt to place the NHRCK under the office of the president and the Lee government's interventions in the institution's financial and administrative matters. At reevaluation, the accreditation committee made a number of recommendations to the NHRCK. First, the SCA-ICC observed that "the NHRCK is considered as a 'central government institution' under the National Fiscal Act and as such does not enjoy complete functional autonomy from the government. This is in contrast to 'independent institutions,' which are constitutionally entrenched." The SCA further recommended that the NHRCK adopt "a broad and transparent appointment process," because "the process of appointing commissioners, which relies on nomination from the president, the National Assembly, or the Chief Justice of the Supreme Court, does not provide for formal public consultation in the recruitment and scrutiny of candidates, nor for the participation of civil society." Lastly, the SCA recommended that the government provide the NHRCK with "more autonomy to appoint its own staff in a manner that does not unnecessarily delay the fulfilment of the NHRCK needs," and expressed its concern about "the recent proposal to place the Commission directly under the office of the president and subsequent interventions in the Commission's financial and administrative affairs" (ICC 2008).

As early as 2009, NGOs began persistently requesting the ICC to downgrade the status of the NHRCK. The Asian Human Rights Commission, an NGO based in Hong Kong, sent a letter to the ICC chairperson expressing its view that the NHRCK should be downgraded because it no longer complied with the Paris Principles (Bae 2009). ANNI also called on the ICC to reconsider the status of the NHRCK, stating that it believed that "recent events and those that occurred in the last 2 years deeply impact the ability of the NHRCK to effectively fulfill its mandate" (ANNI 2011a). In June 2014, a coalition of eighty-six Korean NGOs released a report entitled "The

Opinions of Korean NGOs on the National Human Rights Commission of Korea to the ICC-SCA” urging the ICC not to reaccredit the NHRCK with status A. It elaborates its rationale:

For the past six years, the NHRCK has retreated in promoting human rights and preventing human rights violations while its independence has been increasingly undermined. If the NHRCK retains status A despite the fact that it [has] lost the confidence of civil society, it will negatively impact not only [. . .] domestic human rights situations, but also [. . .] the general missions of the NHRIs in the international community. In this regard, the ICC-SCA should downgrade the status of the NHRCK to emphasize the fact that its functions as a[n] NHRI have been weakened and to enforce it[s need] to refurbish itself, rather than reaccrediting it with status A [. . .] (NHRCK Watch 2014, 35).

In response to these exhortations from the NGOs, the SCA-ICC decided in 2014 to defer the NHRCK’s accreditation review and recommended that the NHRCK implement a transparent appointment process, based on pluralism, for its commissioners, as they had been recommended to do in October 2008 (2017, 248). The final decision was deferred to October 2014; the accreditation decision was at that time again deferred to March 2015. Yu states that the reason for deferral might have been to provide the NHRCK with an opportunity to implement the recommendations before downgrading their status (Yu 2014, 15). After a couple of years, the NHRCK finally received an A rating by including the SCA recommendations in the 2016 revised NHRCK Act. However, the years of review required for the NHRCK to regain its A status show the drastic drop in its international reputation; it had gone from a “model institution” to an institution under heavy criticism from domestic, regional and international human rights communities.

#### 6.3.4.2 Continued Concerns of International Human Rights Community

In addition to the ICC, other UN human rights bodies and mechanisms who had once praised the NHRCK as a model institution began to raise alarms about its weakening independence and effectiveness after 2008.

Two UN Special Rapporteurs, who visited Korea in 2010 and in 2013, expressed a considerable amount of concern over the Korean government's weakening of the NHRCK. The UN Special Rapporteur on Freedom of Expression and Opinion, Frank La Rue, who visited Korea in May 2010, stated that he regretted not being allowed to meet collectively with the commissioners of the NHRCK, despite numerous requests; he also expressed his disappointment over the NHRCK's lack of recent activity relating to protection and promotion of freedom of expression and opinion. The NHRCK had not intervened in several major human rights cases, including "the defamation lawsuits filed against the producers of Munhwa Broadcasting Corporation (MBC)'s PD Notebook; the prohibition of assemblies and demonstrations after sunset; and the case of Mr. Park Won-soon." La Rue encouraged the government to improve "the appointment process of the Commissioners" as per the recommendation of the SCA-ICC (LaRue 2010).

Another UN Special Rapporteur working on the situation of human rights defenders, Margaret Sekaggya, expressed concerns over the situation of the NHRCK in her report of her visit to Korea. She noted that the "NHRCK has played a key role in the consolidation of democracy in the Republic of Korea and the establishment of a solid human rights institutional framework," but that "the institution has in recent years received criticism from civil society with regard to its independence from the Government, which is at times perceived to be compromised." The Special Rapporteur urged the "NHRCK to do its utmost to regain the confidence of human

rights defenders and be a strong, independent institution capable of credible and impartial scrutiny of the State's human rights obligations"; she called on the Korean government to "ensure the full independence and effectiveness of NHRCK, including by amending existing provisions to allow for public participation in the nomination and appointment process of Commissioners and to ensure that the Commission has full autonomy in selecting its own staff" (LaRue 2011b).

Several human rights law monitoring bodies also expressed their concerns about the NHRCK, especially about the government's attempts to weaken its independence and effectiveness by attempting to place it under the office of the president and by cutting its staff. On December 17, 2009, the Committee on Economic, Social and Cultural Rights published its observations of the human rights situation in Korea, which included concerns over the NHRCK:

The Committee is concerned about the limited jurisdiction of the National Human Rights Commission of Korea over Covenant rights and the lack of its investigative power. The Committee is deeply concerned about the downsizing of the Commission by 21 per cent, whereas for all other ministries, it has been of 2 per cent at the most. The Committee is particularly concerned about recent developments in the State party that have put the independence of the Commission under severe pressure (United Nations Economic and Social Council 2009, ¶ 8).

Following these observations, the committee recommended that the Korean government "ensure that the national human rights commission of Korea remains compliant with the Paris Principles; strengthen and expand the mandate of the commission to cover all ICESCR rights; allocate adequate human and financial resources, including human rights experts, in accordance with the National Human Rights Commission of Korea Act; and allow individuals to file

complaints on violations of economic, cultural and social rights directly to the commission”  
(United Nations Economic and Social Council 2009, ¶ 8).

On August 1, 2011, the Committee on the Elimination of Discrimination against Women (CEDAW) observed that

while appreciating the contribution of the national human rights commission of Korea to the reporting process and the data on the number of human rights violations and discrimination petitions filed before the Commission per year, the committee shares the concern of the Committee on Economic, Social and Cultural Rights (see e/c.12/kor/co/3) that the Commission was downsized by 21%, whereas all the other ministries were downsized by 2% at the most, and that recent developments in the state party have put the independence of the commission at risk (CEDAW/C/KOR/CO/7).

Having expressed its concerns about the NHRCK, CEDAW made the following recommendation to the Korean government:

The committee reminds the state party of its responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles, in particular with respect to its independence. It urges the state party to allocate to the Commission adequate human and financial resources, including human rights experts, in accordance with the National Human Rights Commission of Korea Act, and to strengthen its monitoring functions, including in the area of gender and women’s rights, with a view to regaining credibility, public confidence and legitimacy (CEDAW/C/KOR/CO/7).

On February 2, 2012, the Committee on the Rights of the Child also stated its concerns: “the committee is further concerned at the National Human Rights Commission having been downsized by 21% in March 2009, and, despite previous recommendations by the committee, [at



the NHRCK's] remaining without a specialization in child rights" (CRC/C/KOR/CO/3–4).

Another human rights–monitoring body, the Committee on Elimination of Racial Discrimination, raised concerns on October 23, 2012, over the situation of the NHRCK, pointing out that while

the budget of the National Human Rights Commission of Korea (NHRCK) has increased by more than 4% in the current year, the committee is concerned that the increase does not compensate for the downsizing of 21% which occurred a few years ago. [. . .] The committee notes that some experienced commissioners resigned in the recent years and that the NHRCK did not provide an independent report on the implementation of the convention to the committee, but rather provided comments to the draft report of the state party (CERD/C/KOR/CO/15–16).

The committee further reminded the government “of its responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles, in particular with respect to its independence,” and urged the government “to provide [the NHRCK] with adequate financial resources and experienced human rights experts so as to enable it to carry out its mandate effectively, including promoting and monitoring the rights under the convention” (CERD/C/KOR/CO/15–16).

International and regional human rights NGOs strongly opposed the government's decision to downsize the NHRCK, warning that it would damage the Commission's good reputation. In March 2009, Amnesty International urged the Korean government to reconsider the plan to put the NHRCK under the president's office and warned that, should the government proceed with its plan, it would “jeopardise the Commission's effectiveness and independence” (Amnesty International 2009). In 2011, the organization once again demanded that the government ensure a transparent and fair appointment process for the commissioners, a process

that is a critical requirement for “an independent and fully empowered national human rights institution which enjoys the trust and confidence of civil society, particularly the local human rights community.” In 2012, Amnesty International expressed its concerns over the proposal to reappoint Hyun Byung-chul as the chairperson of the NHRCK, again urging the government “to ensure that members of the NHRCK are appointed through a transparent process and in consultation with civil society groups and other relevant stakeholders, and that those appointed have relevant human rights-based knowledge and expertise” (Amnesty International 2012).

In addition, ANNI explained their intention to conduct a mission of inquiry to the NHRCK in order to monitor the crisis affecting the Commission, stating, “the NHRCK has been considered a model national human rights institution in Asia, [located as it is] in a country respected for its democratic transformation and economic prosperity. However, since 2008, the ANNI has been made aware of developments within the NHRCK which have adverse implications on the independence, pluralism and effectiveness of the Commission” (ANNI 2011b). It expressed its frustration over the unsuccessful efforts of the organization to normalize the NHRCK: “there has not been any change for the better on any of these issues and further, there is reasonable cause for belief that these trends may continue, if not worsen, leading to a collapse in confidence of the NHRCK as an institution committed and capable of protecting and promoting human rights in South Korea” (ANNI 2011b). After conducting its mission of inquiry, which took place from May 11 to May 13, 2011, the ANNI delegation reiterated its extreme concern over the problems at the NHRCK and the consequences the proposed changes would have for the integrity and reputation of the NHRCK at both the national and international levels.

### 6.3.5 Public Perception of the NHRCK: 2011 Survey Results

In a survey conducted in 2011, 80% of participating experts gave negative feedback on the Korean government's leadership in human rights, saying that the human rights situation of Korea had deteriorated and the Korean government did not apply human rights considerations in its policies. One of the major reasons given for the poor leadership human rights record was the weakened authority of the NHRCK (NHRCK 2011, viii–ix).

The survey identified the need to recover the credibility of the NHRCK and strengthen its capacity. It discovered that the NHRCK's international reputation had started to decline with the Lee Myung-bak government's attempt to place the NHRCK under the president's office, and noted that the intense conflicts between civil society and the government around the issue of the NHRCK contributed to the precipitous crash of the NHRCK's international reputation and its plunge in credibility in Korean society. The survey found that awareness of the NHRCK had somewhat increased over the years, but that only 40% of experts and the general public said that the activities of the NHRCK made a positive contribution. It is notable that the general public (62.0%) and the expert group (81.3%) agreed that the authority and capacity of the NHRCK should be strengthened. Furthermore, 67.6% of the expert group expressed that it was inappropriate to downsize the NHRCK (NHRCK 2011, xv).

The survey revealed the negative perceptions of Korea's international human rights contribution under the Lee administration. 80% of experts responded that Korea's contribution is inadequate and called for making Korea's human rights sensitivity commensurate with its economic size. The remaining 20% said that Korea was contributing to human rights issues of the international community; those who provided positive feedback noted Korea's membership

on the Development Assistance Committee of OECD and Ban Ki-moon's role at the UN (NHRCK 2011, ix).

#### 6.4 Conclusion

In this chapter, I examined in detail how the NHRCK was weakened under Lee Myung-bak, whose conservative political identity allowed no room for the NHRCK to operate. The government's deliberate attempts to weaken the NHRCK—cutting the budget and staff and appointing a controversial chairperson and commissioners—eventually made the NHRCK plummet to its lowest levels of credibility, independence, effectiveness, and reputation since its inception. During Lee's rule, the NHRCK shifted from a model intuition extolled by international human rights community to a subject of criticism from that same community. Despite strong and persistent complaints from domestic and international human rights communities, which called for the government to change its policies, the regime did as it pleased. However, the diminishment of the NHRCK did not mean that Korea had abandoned its decades-long desire to become *seonjingung*; indeed, this chapter offered several other examples of how the regime aggressively endeavored to be recognized as *seonjingung*, mainly through neoliberal economic policies rather than compliance with international human rights standards.

The recession of the NHRCK and the regime's deliberate policy choice to disregard human rights in its pursuit of becoming *seonjingung* evidence the importance of taking the domestic context into account when studying norms diffusion; even once successfully diffused, norms may change and be reshaped by domestic political identity and policy preferences. This chapter established how the components of the *seonjingung* identity changed from internalizing

human rights (exemplified through the creation and promotion of the NHRCK) to excluding human rights (demonstrated through government policies that weakened the NHRCK).

## CHAPTER 7

### CONCLUSION

#### 7.1 The NHRCK after 2012

The NHRCK continued to experience a downturn in power and status under Park Geun-hye, who succeeded Lee Myung-bak in February 2013. Some argue that the NHRCK improved a bit when a new chairperson, Lee Sang-ho, took office in August 2015; however, the NHRCK's reputation, which had drastically declined in the previous few years, did not show signs of recovery despite Lee's appointment. Park's policy preference toward the NHRCK did not differ much from that of Lee Myung-bak. The NHRCK managed to obtain another A status from the ICC in 2016, but that did not seem to boost the organization's reputation, and the international community continued to express concern over the NHRCK's situation (see LaRue 2011b; and United Nations Economic and Social Council 2017); Park's government remained unresponsive. I have not offered here a separate analysis of the NHRCK under Park, as her presidency has not changed the NHRCK very much, unlike that of previous governments. It is also difficult to describe the desired identity of the Park Geun-hye government and its relationship to *seonjin*; the regime was guided under somewhat irrational conditions, which led to Park Geun-hye's impeachment in March 2017.

#### 7.2 Conclusion of the Dissertation

*Why and how do norms get diffused?* States comply with international human rights norms and create NHRIs for various reasons: because they are receiving pressure from domestic or international agents; because they need to create an "alibi institution" to avoid criticism;

because they wish to project a certain national image; and, sometimes, simply because they want to do the right thing. Previous studies examining state compliance with NHRI norms broadened our understanding of *what* makes states comply with and create NHRIs, but there has been little research on *how* and *why* states comply with international norms. I filled this gap by doing an in-depth analysis of one country, Korea; I examined its identity construction and reconstruction, and I unraveled the ways that Korea's desired identity—that of a *seonjingu*—drove Korea to, at times, actively embrace global human rights norms through the NHRCK and, at other times, to disregard these norms. This empirical study of Korea and the NHRCK thus attempts to broaden the scope of our understanding of compliance issues by contending that desired national identity is one of the key components in why states comply with international human rights norms.

*How do international norms and domestic context interact with one another?* This dissertation opens up space for broader questions about the interplay between domestic politics and the international sphere—the way that domestic politics influence international norms and institutions, and the way that they influence the diffusion and acceptance of international norms. In the case of Korea, the international norms remained the same, but the domestic political context and the state's desired identity changed, and these changes determined whether the state accepted or rejected those international norms; this study thus shows that international norms could have different effects in a single country as the domestic political context changes over time. The NHRCK, which was originally created according to international norms and reflected Korea's desire to pursue international legitimacy, rose and fell in a relatively brief time period as the domestic regime changed, and it is thus an excellent case study in the effect of domestic contexts on international norm diffusion. This dissertation confirms that structures and agents at the domestic level are the crucial factors that determine the compliance or disregard of global

norms. The case of Korea also provides empirical evidence of how compliance with international human rights norms strengthened a country's power and legitimacy rather than limiting them.

### 7.3 Suggestions for Future Studies

The weeks leading up to the impeachment of former Korean president Park Geun-hye were a collective and forceful journey for the hundreds of millions of Koreans who protested for weeks on the streets of all major cities in Korea, demanding that she step down and restore democracy. The demonstrations were different from previous protests: they were orderly and peaceful, and they were made up of common people who participated voluntarily rather than the activists who had led such political mobilizations in the past (Tharoor 2017). It is believed that the success of this "people power" built the confidence of the Korean people, making them feel like citizens of a real democratic country (Dudden 2017). In other words, it may have enabled Korean citizens to transform their intersubjective identities: instead of constantly seeking recognition or endorsement from others, they no longer required outside recognition. Future studies on state identity might examine how the Korean national identity changed after Park Geun-hye, and how that change might also affect Korea's compliance with international human rights norms, including any changes that occur in the NHRCK. It may be possible that Korea's long- desired *seonjingung* identity, which was always based on comparison with other countries, is no longer valid.

*Hope for the NHRCK under Moon Jae-in.* Moon Jae-in, the current Korean president, is a former human rights lawyer who served in the cabinet of former president Roh Moo-hyun; Moon was sworn in as the nineteenth president of Korea on May 10, 2017, and his election represents the hope to restore democracy and normalize the country after Park's impeachment. One of his



commitments is to strengthen the NHRCK—a promise that the Commission welcomed (NHRCK 2017). Moon introduced several specific measures to restore the NHRCK, including an assessment of government bodies' acceptance rates for NHRCK recommendations; this is intended to ensure that government bodies are again taking the NHRCK seriously (Kim 2017a). In addition, there is some expectation that the NHRCK could become a constitutional body in the coming years (Kim 2017b). Moon's presidency will also offer an interesting case study for examining how domestic political contexts determine the acceptance or rejection of global norms.

*NHRIs studies taking the identity and domestic context seriously.* My study analyzes Korea's desired identity of *seonjungkuk* to show how international human rights norms on NHRIs were first widely diffused and accepted in the country, but changed over time, becoming less accepted, as the Korean domestic context changed. The study marshaled evidence to show the establishment of an NHRI is not an end of the story of how human rights norms are adopted; the changing domestic context must also be examined in order to fully understand the permanent institutional arrangement that exists between a state and its NHRI—how the state's interests shape and change its policies, how and when the relationship does and doesn't work, and most of all, *why* states enter into this arrangement voluntarily.

I hope that other researchers will conduct similar in-depth studies on NHRIs in particular countries, each based on the host state's unique identity and examining how its changing interests shape and change its policies. Such studies will enrich our understanding on NHRIs and contribute to the body of empirical studies of theories on compliance.

## **APPENDICES**

## **APPENDIX A**

### **Chronology of NHRCK Building Process (1993–2002)**

- June 1993—Domestic NGOs participated in the 1993 Vienna Conference on Human Rights and introduced NHRIs to Korea
- July 1994—Domestic NGOs called for the establishment of an NHRI in Korea, following their participation in UN Workshop for the Asian and Pacific Region on Human Rights
- November 1995—Domestic NGOs and transnational human rights NGOs reiterated the call for creating an NHRI
- February 1998—Kim Dae-jung inaugurated, officially announces his intention to create an NHRI
- February 1998—Amnesty International welcomed the political commitment of President Kim Dae-jung and urged that the new NHRI be in conformity with the Paris Principles
- May 1998—Amnesty International issued a paper entitled “Proposed Standards for a National Human Rights Commission”
- September 17, 1998—Thirty Domestic NGOs launched the Joint Committee of the Korean NGOs Coalition for Enacting the Human Rights Law and Establishing the National Human Rights Commission
- September 25, 1998—Ministry of Justice released a draft law relating to the establishment of the NHRCK
- October 23, 1998—Amnesty International sent an open letter to President Kim Dae-jung urging him to reconsider the draft bill proposed by the Ministry of Justice
- October 29, 1998—Kim Dae-jung met with Korean human rights NGOs and promised to draft a proper law; he instructed the ruling National Congress for New Politics (NCNP) to draft new legislation in accordance with the UN Paris Principles
- November 3, 1998—NCNP proposed a bill guaranteeing the independence of the NHRCK
- November 28, 1998—Ministry of Justice proposed an amended version of its earlier draft bill without substantial changes
- March 22, 1999—the government and the ruling party unexpectedly agreed on the Ministry’s amended proposal making the NHRC a private institution
- April 6, 1999—Thirty activists from eighteen NGOs staged a week-long hunger strike

- April 6, 1999—Eleven International Human Rights NGOs issued a public statement supporting those NGOs and criticizing the government for its failure to meet the Paris Principles
- April 7, 1999—the Cabinet meeting submitted the government bill unchanged to the National Assembly
- April 9, 1999—Amnesty International issued its third Open Letter to President Kim Dae-jung in support of the Korean NGOs and pointed out that the current form of NHRC would not receive the respect of the international community
- June 16, 1999—Joint Committee finalized its own version of the bill, but the ruling party still had to deal with the recalcitrant Ministry
- October 1999—UN High Commissioner for Human Rights, Mary Robinson, stressed the importance of an NHRI being an independent government institution during her meeting with President Kim
- December 20, 1999—The government and the ruling party decided to postpone the passing of the bill until the following year
- January 1999—September 2000—Negotiation for the bill remained largely dormant
- October 13, 2000—President Kim Dae-jung was selected the winner of the Nobel Peace Prize 2000
- October 17 and 28, 2000—NCNP sought to harmonize the differences between NGOs and the Ministry
- January 19, 2001—NCNP finalized the Draft National Human Rights Commission Act
- February 27, 2001—Draft National Human Rights Commission Act was tabled at the National Assembly
- April 30, 2001—National Human Rights Commission Act was passed
- May 24, 2001—National Human Rights Commission Act came into effect
- November 25, 2001—The National Human Rights Commission was launched and the first chairperson, Kim Chang-guk, was appointed
- November 26, 2001—NHRCK started to receive complaints (122 cases received on first day)
- December 3, 2001—The Commission heard complaints in person for the first time at detention facilities (Cheongsong Custody Office and Daegu Correctional Institution) and investigated an unnatural death case at Ulsan Detention Center

- February 19, 2002—Choi Young-ae appointed as Secretary-General of the NHRCK
- February 20, 2002—NHRCK submitted an opinion opposing the Anti-terrorism Act being prepared by the National Security Agency
- June 2, 2002—NHRCK delegation visited APF and New Zealand NHRI to facilitate cooperation with NHRIs in Asia-Pacific
- July 23, 2002—NHRCK expressed regrets to the police over the infringement of rights to freedom of association and assembly during the World Cup
- November 9, 2002—Chairperson and NHRCK delegation participated in the APF 7th meeting in New Delhi, India
- November 18, 2002—NHRCK stated “It is inappropriate for the NHRCK, an independent institution, to seek prior approval from the Office of the President to travel abroad” over the warning from the president’s office for not seeking prior travel approval

## APPENDIX B

### Chronology of NHRCK consolidation process (2003–2007)

- January 11, 2003—NHRCK participated in 32nd session of the Committee on the Rights of the Child and visited the UN OHCHR
- February 3, 2003—NHRCK published a report on Korea's implementation of international human rights treaties
- March 16, 2003—NHRCK submitted an opinion supporting the abolishment of Hoju system to the Constitutional Court
- March 26, 2003—NHRCK expressed an opinion regarding the Iraq war
- September 13, 2004—Chairperson Kim Chang-guk appointed to chair the 9<sup>th</sup> Annual Meeting of the APF
- September 17, 2003—NHRCK hosted the 7th APF meeting
- September 14, 2004—UN High Commissioner for Human Rights Louise Arbour visited the Commission
- December 24, 2004—2nd Chairperson Choi Young-do was appointed
- January 7, 2005—Kwak No-hyun appointed as Secretary-General of the NHRCK
- April 4, 2005—3rd Chairperson Cho Young-hoang was appointed
- April 6, 2005—The Commission issued an opinion supporting the abolishment of capital punishment
- April 14, 2005—The Commission issued an opinion supporting legislation to protect irregular workers
- June 29, 2005—Kwak No-hyun takes part in the UN investigation into the human rights situation in Nepal at the request of the UN High Commissioner for Human Rights
- July 18, 2005—NHRCK carried out a campaign with *Seoul Newspaper* on “Ways to become human right *seonjinguk*”
- September 14, 2005—The Commission hosted the 7<sup>th</sup> International Conference of National Human Rights Institutions
- October 5, 2005—The Commission opened regional offices in Busan and Gwangju

- December 26, 2005—The Commission recommended the government to recognize the right of conscientious objection to compulsory military service and to introduce alternative ways to complete military service duties
- April 9, 2006—NHRCK participated in the 17th ICC meeting and APF meeting
- October 24, 2006—NHRCK participated in the International Conference of NHRIs in Bolivia
- October 30, 2006—Fourth Chairperson Ahn Kyung-hwan was appointed
- November 24, 2006—NHRCK celebrates its fifth anniversary
- January 29, 2007—Kim Chil-jun appointed Secretary-General of the NHRCK
- September 3, 2007—NHRCK invites commissioners from developing countries for a workshop (Nigeria, Afghanistan, East Timor, etc.)

## **APPENDIX C**

### **Chronology of NHRCK recession process (2008–2012)**

- January 16, 2008—The Transition Committee proposed placing the NHRCK under the Office of the President
- January 17, 2008—The UN High Commissioner for Human Rights sent a letter to the Chairperson of the Committee recommending reconsideration of the proposal
- January 18, 2008—Amnesty International made a public statement urging the government to reject the Transition Committee’s proposal
- January 22, 2008—ANNI publicly criticized the proposal of the Transition Committee
- January 23, 2008—A group of domestic NGOs urged the government not to accept the proposal of the Transition Committee
- March 2009—Ministry of Public Administration and Security proposed to reorganize the NHRCK and cut the budget by 21%
- February 25, 2009—The UN High Commissioner for Human Rights wrote a letter to the Minister of Foreign Affairs and urged the government to reconsider the proposal of the Ministry of Public Administration and Security
- March, 2009—chair of the ICC and the Chair of the Asia–Pacific Forum each sent a letter to the Ministry of Foreign Affairs expressing their concern over the proposal to downsize the NHRCK
- March 23–27, 2009—NHRCK participated in the annual meeting of the ICC
- April 6, 2009—NHRCK staff reduced from 208 to 164
- July 8, 2009—Chairperson Ahn Kyung-hwan resigns
- July 17, 2009—Fifth Chairperson Hyun Byung-chul appointed
- October 5, 2009—Kim Ok-shin appointed Secretary-General of the NHRCK
- November 24, 2009—Secretary-General of Amnesty International, Irene Khan, visits the NHRCK to discuss the independence of the Commission
- July 21, 2010—Son Sam-gil appointed Secretary-General of the NHRCK
- November 1, 2010—Two standing commissioners, Yu Nam-young and Mun Kyung-ran, resigned
- November 10, 2010—Non-standing commissioner Cho Kuk resigned



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